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FAIR, ACCOUNTABLE, INDEPENDENT, AND RESPONSIBLE (FAIR) JUDICIARY PROGRAM IN UKRAINE

**ANNUAL PROGRESS REPORT
OCTOBER 2011 TO SEPTEMBER 2012**

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EXECUTIVE SUMMARY

Year 1 of USAID's Fair, Accountable, Independent and Responsible (FAIR) Judiciary Program in Ukraine is marked by the continued demonstration that achievements made through USAID's rule of law programming are being extended across Ukraine and solidified institutionally. FAIR's primary objective – supporting legislative, regulatory, and institutional reforms in Ukraine's judicial institutions to build the foundation necessary for a more accountable and independent judiciary – requires USAID's committed assistance and FAIR's successes to date continue to advance this objective in the face of a sometimes challenging environment.

Unfortunately, the Ukrainian judiciary remains subject to interference from the executive branch with relatively weak judicial institutions and limited capacity to fully defend and uphold judicial independence.

Nevertheless, the Law on the Judiciary and Status of Judges remains an overall success for Ukraine. Based upon its main goals, and in coordination with judicial and civil society leadership, and guidance from USAID, FAIR provided critical support to the judiciary in Year 1 in the following key areas:

Constitutional Reform. Sustainable judicial development is not possible without constitutional reform and FAIR's Ukrainian Constitution gap analysis concretely set forth constitutional needs for an independent judiciary, steps for moving forward, and, with the adoption of Constitutional Assembly regulations, ensured greater involvement for civil society in the constitutional reform process. FAIR also signed a protocol of cooperation with the first President of Ukraine and Chairman of the Constitutional Assembly Leonid Kravchuk, demonstrating a commitment and providing a framework for engagement between FAIR and the Constitutional Assembly. To ensure demand-driven Ukrainian ownership and leadership, FAIR signed protocols of cooperation with nine key project partners covering all program objectives through 2016.

Judicial Selection. FAIR's Year 1 support included the lawful establishment of an objective and merit-based system for judicial selection. With FAIR's guidance and assistance, the High Qualifications Commission of Judges (HQC) conducted a remarkable national testing for 3,476 judicial candidates. In a firm demonstration of this program's sustainability, the test was conducted entirely with HQC financing, and overseen by independent monitors. As a result, more than 750 judges have now been transparently appointed to the Ukrainian bench.

Professional Conduct Code. The integrity of Ukraine's judiciary took meaningful steps forward through FAIR's support to the Council of Judges' (COJ) and their preparation of a new Code of Judicial Ethics. The improvements over the current Code of Professional Ethics for Judges are notable, including a prohibition on ex parte communications and substantial conflict of interest and recusal provisions. With FAIR support the COJ conducted seven regional "town halls" and an online forum that resulted in more than 30 recommendations for further code improvement, with final code adoption anticipated by the Congress of Judges in February 2013.

FAIR by the Numbers

- 406 courts covering every region of Ukraine receive assistance
- 15 key government justice sector institutions supported
- Targeted programming provided to nine civil society organizations
- Promoted four changes in Ukrainian legislation to enhance judicial independence
- 875 judges and judicial personnel trained
- 59 trainers qualified under Training of Trainers Program
- 389 justice sector personnel engaged for long-term strategic planning for the judiciary
- 160 judges trained in judicial self-governance mechanisms
- Supported national testing of 3,476 judicial candidates

Judicial Discipline. This year FAIR introduced a standardized system for judicial misconduct complaints, now available on the HQC website and increasingly used by Ukraine's citizens as the means to raise concerns regarding potential judicial misconduct. In the past year more than 22,000 complaints were filed and FAIR provided the HQC assistance in drafting investigation regulations. As a result, the HQC was able to conduct more than 8,000 investigations, open 580 full disciplinary cases, and discipline 74 judges. In what appears to be a regional first, the HQC now posts 100% of judicial discipline decisions on its website.

Targeted Training. During Year 1 FAIR undertook a comprehensive training needs assessment with the HQC and National School of Judges (NSJ) to outline the steps needed for the NSJ to fulfill its mission of providing technical skills to more than 8,000 judges and 32,000 court staff. Key efforts included cooperation with DOJ/OPDAT to provide necessary education on the new Criminal Procedure Code. Through this program, the NSJ prepared 59 trainers who in turn trained 2,033 judges trained on the new code during 38 programs in 22 regions in just three weeks. Working with IFES, FAIR supported the High Administrative Court (HAC) in conducting election law training for 600 judges in nine regions, trainings that utilized a one-to-one cost share with the HAC.

Improved Court Administration. Under the leadership of the COJ and State Judicial Administration (SJA), FAIR developed a framework for court performance providing a basis for objectively assessing the implementation and needs of court operations. This framework includes more than 20 performance measurements and 70 indicators currently being piloted in eight regions. FAIR spearheaded improved court budgeting for the COJ with recommendations on budget policies and procedures that will be field-tested in Year 2. Demonstrating its commitment to reform, the SJA conducted Ukraine's first international court innovation conference, funded almost entirely by the SJA, which included introduction of the SJA's draft national strategy for court automation.

Engaging Civil Society. FAIR's commitment to a strengthened role for civil society as advocates for and monitors of judicial reform was firmly established in Year 1. FAIR supported eight CSOs to partner with 34 courts in 13 regions to conduct interviews with over 4,000 court users and develop "citizen report cards" to improve court services. In one year the number of courts participating in this program more than doubled. FAIR supported the COJ and SJA to increase public awareness about the judiciary with the dissemination of thousands of public awareness kits for court offices and libraries using a broad multimedia campaign. These public outreach efforts resulted in the development of communications strategies for the High Civil and Criminal Court and two large regional appellate courts, as well as a draft communications strategy for the COJ.

Strategic Planning. An independent and effective judiciary is not possible without a coordinated and agreed upon strategy supported by both judges and court staff, thus FAIR's support to the COJ and SJA in drafting an overall strategic plan was critical. This plan includes core values, principles, and areas of administration for the next three years. The draft strategic plan was developed with input from more than 400 judges and court staff in 12 regions and is expected to be adopted by the COJ and SJA in February 2013.

Assistance is still needed to guarantee that the gains Ukraine has made are more fully developed and broadened, but it is now apparent that the advances achieved by Ukraine's judiciary have been institutionalized and interwoven, and not easily erased. The report that follows describes these successes in greater detail, as well as providing information on key achievements, progress made in meeting performance targets, budget execution, project management and donor coordination over the past year.

OVERVIEW OF THE PROJECT

As outlined in the contract, the following section contains a discussion of the current status of affairs and key achievements to date for each Expected Result, from October 1, 2011 through September 30, 2012. Deviations in implementation of the work plan and problems requiring resolution or USAID intervention are discussed, if they are applicable. Views expressed by project counterparts do not necessarily represent those of the FAIR team.

EXPECTED RESULT 1.1: UKRAINIAN JUDICIAL REFORM LEGISLATION RECEIVES FAVORABLE COMMENTS FROM THE VENICE COMMISSION AS MEETING INTERNATIONAL STANDARDS AND REFLECTS DOMESTIC AND INTERNATIONAL EXPERT INPUT

CURRENT STATUS OF AFFAIRS AND KEY ACHIEVEMENTS: This reporting period marked progress made in the area of judicial reform with legislation improvement.

On October 20, 2011, the Verkhovna Rada (Parliament) adopted the Law on Amendments to a Number of Legislative Acts Regarding the Supreme Court of Ukraine (No. 3932), which was aimed to review the status and role of the Supreme Court as the highest judicial body. The Law made several positive amendments to the legislation: (1) expanding the Supreme Court's authority to make a final decision in cases of all jurisdictions, where different courts applied the law differently; (2) requiring all decisions of the Supreme Court of Ukraine to be posted within 10 days after adoption on its official website; (3) increasing the number of the justices from 20 to 48; and (4) in accordance with Venice Commission recommendations, restored all four chambers, namely, the Chamber on Administrative Cases, Chamber on Commercial Cases, Chamber on Criminal Cases, and Chamber on Civil Cases.

The law introduced relevant amendments to provisions of the Criminal Procedure Code (CPC), Commercial Procedure Code, Civil Procedure Code, Code on Administrative Procedure, Law on Access to Court Decisions, and Law on the Judiciary and Status of Judges. FAIR considers this amendment not to have gone far enough, as it did not (1) prescribe the Supreme Court of Ukraine's discretion to decide the admissibility of cases for its review, as recommended by the Venice Commission; or (2) introduce changes to the Law on Access to Court Decisions (to be named below).

On April 13, 2012, the Verkhovna Rada adopted the CPC (No. 4651) and Law on Amending Some Legislative Acts of Ukraine with Regard to Adoption of the Criminal Procedure Code (No. 4652). This law consequently amends the Law on the Judiciary and Status of Judges, specifically, to (1) introduce specialization of juvenile judges in trial and appellate courts; (2) create the investigative judge position in the trial courts; and (3) introduce the provisions on people's assessors and jurors in criminal justice cases. The new CPC includes several new approaches and processes, such as plea agreements and house arrest, increasing the role of the defense bar, introducing the position of investigative judge to deal with violations of constitutional rights during criminal investigations. FAIR supported the National School of Judges (NSJ) in conducting training for judges on innovations in the CPC under Expected Result 3.1, which we describe below.

Milestone Progress ER 1.1

- Introduced draft amendments to the Law on the Judiciary and Status of Judges (amended according to Venice Commission recommendations) to the President's office for consideration.
- Law on the Bar and Advocates Activity was adopted by the Verkhovna Rada of Ukraine on July 5, 2012.
- Held public discussion on pending judicial reform legislation (December 20 and 21, 2011, Conference on Judicial Reform in Ukraine and International Standards for Judicial independence).
- Concept Paper on Legal Education Reform developed and presented to the members of the Working Group on Legal Education Reform in Ukraine.
- Developed Draft Concept Paper on amendments to the Law on Access to Court Decisions.
- Expert helped identify the gaps and develop recommendations to improve the draft regulation on transferring judges within their term of first appointment.

On April 24, 2012, the Verkhovna Rada adopted the Law on Amending Tax Code and other Laws of Ukraine (No. 4661) to address the issue of annual tax declarations submission by judges to meet the Tax Code and Law on the Principles of Preventing and Combating Corruption so as to avoid duplication. At the same time, the law introduced negative changes that decrease the level of transparency in the financial status of appellate and local court judges. As a result, the State Judicial Administration (SJA) is no longer obliged to post its declarations on the judiciary's web portal for public accessibility.

On June 5, 2012, the Verkhovna Rada adopted the Law on Amending some Legislative Acts of Ukraine (No. 4874), which amends the Law on the High Council of Justice, Law on the Verkhovna Rada Rules of Procedure, and Law on the Judiciary and Status of Judges to strengthen judicial independence. The Law provides better protection for judges against prosecutors' attacks during the litigation process and foresees the consideration of discipline complaints on judicial misconduct only after case cassation instance results. The law also improves the judicial appointment procedure by the President and life appointment procedure by the Parliament to bring them into line with Venice Commission recommendations, which minimize the scope of discretion from the bodies who deal with judicial appointment.

This year, the FAIR team worked with various partners on improving the legislative and regulatory framework for the judiciary. FAIR constantly monitored legislative initiatives and analyzed their potential impact. FAIR will continue working with the key implementing partners to address the shortcomings of pending and adopted legislation.

As mentioned previously, the Law on Access to Court Decisions was amended on October 20, 2011 to cancel the general rule that all court decisions must be posted on the Unified Registry of Court Decisions (Registry). This was done due to the overwhelming number of already posted court decisions and according to an expert's recommendation to optimize the Registry operation. The law states that the Council of Judges (COJ), in concurrence with the SJA, will decide which decisions of local and appellate-level courts have to be included in the Registry.

On February 17, 2012, following a roundtable discussion between media and legal community representatives facilitated by the SJA and FAIR, the COJ approved a list of court decisions to be included in the Unified Registry of Court Decisions.

With the aim of increasing the Registry's functionality, the COJ determined that the following types of court decisions should be included: (1) courts' decisions to open, or to refuse to open, proceedings; (2) court rulings adopted in the course of proceedings that are the subject for immediate appeal; (3) court orders to ban property transactions, etc., or to secure the claim, suspension, or enforcement of a court decision; (4) court orders adopted in absentia; (5) court resolutions, decisions, or verdicts, except decisions granting permission to conduct certain investigative or operational-investigative



Journalist Egor Sobolev (left) and FAIR DCOP Nataliya Petrova (second from left) during the roundtable discussion on the list of court decisions to be included in the Unified Registry of Court Decisions on February 14, 2012.

activities; (6) court decisions adopted as a result of reconsideration of the decisions, verdicts, rulings, resolutions; (7) court orders regarding the enforcement of arbitration decisions; (8) court resolutions concerning breach of customs rules and administrative violations for corruption.

On September 5, 2012, the SJA approved Order No. 103, amending the instructions on workflow in trial and appellate courts of the general jurisdiction. The SJA also introduced a unique case numbering system to be instituted and maintained throughout all stages of the appellate and cassation processes. This order was based on the COJ's decision, approved on May 25, 2012, and is the direct result of the roundtable discussion. FAIR experts recommended introducing this unique case numbering system to make it easier to search the Registry, which will increase the functionality of the Unified Registry without legislative changes. FAIR will continue to support improving the legislative framework that relates to accessibility to court decisions, following best international and European standards.

After the Law on Free Legal Aid (No. 3460) was adopted on June 2, 2011, the Government of Ukraine started developing and establishing a free legal aid system. The Centre for Legal Reform and Law Drafting established by the Ministry of Justice (MOJ) was the key implementer of the law, and according to the Presidential Decree No. 374/2012, signed on June 1, 2012, was transformed into the Coordinating Center for Free Legal Aid under the MOJ. This newly created institution was responsible for developing subsidiary legislation to implement the law. The MOJ named FAIR Deputy Chief of Party Nataliya Petrova as a member of the Working Group on Improving the Legislation on Free Legal Aid, a group designed to implement an efficient system for providing free legal aid in Ukraine. FAIR will continue to provide financial and intellectual support to the Coordinating Center for Free Legal Aid to improve the legal and regulatory framework for the free legal aid system.

In November 2011, the FAIR team conducted initial assessments on the bar and legal education with American expert Mary Noel Pepys. The reports from these assessments identified challenges and opportunities related to future work on issues of the bar and legal education reform.

Among other key reform initiatives, on July 5, 2012, the Verkhovna Rada adopted the Law on the Bar and Advocates Activity (No. 5076). Although this draft differs from the draft developed by the Commission for Strengthening Democracy and Rule of Law and was reviewed by Venice Commission experts. Nevertheless, the Presidential Administration, in this draft, considered the Venice Commission experts comments and recommendations. The law aims to bring the status of the defense bar in Ukraine in line with European standards, specifically, by establishing a self-governed organization of defense attorneys — the Association of Advocates of Ukraine, and giving the Association self-regulating functions. FAIR will provide expert support to the Bar Council in implementing the new Law to safeguard legal freedom and self-regulation.

During this reporting period, FAIR, in cooperation with the Organization for Security and Co-operation in Europe (OSCE) Project Coordinator in Ukraine, supported a series the meetings of the Working Group on Legal Education Reform in Ukraine. As a result of these meetings, a draft Concept Paper on Legal Education was developed. The Working Group will continue its activity in the upcoming periods to develop the implementation plan for the Concept Paper. FAIR will provide the Working Group with the expert's information and guidelines to proceed with legal education reform with respect to Bologna process requirements and improving the quality of legal education.

To address its commitment to legal education, FAIR worked with various partners to identify key stakeholders in this area, involved them in discussions, and provided them with comparative law materials and reports. During these expert discussions and meetings, participants highlighted the need to link legal education reform efforts with the broader higher education reform process,

which is now being hotly disputed. FAIR will undertake measures to identify the need and possibility to contribute to the higher education reform through policies that aim to improve legal education.

Finally, FAIR demonstrated its commitment to advocate for and promote judicial and additional key reform initiatives through various discussion forums, including a conference on “Judicial Reform in Ukraine and International Standards for Judicial Independence,” the first Ukrainian – German Legal Summit, a conference on “Higher Education in Ukraine: Internationalization, Reform, and Innovation,” a conference on “The Role of Legal Education in Society Governed by the Rule of Law: Challenge for Ukraine,” the first All-Ukrainian Conference on “Theory and Practice of Legal Education,” an all-Ukrainian roundtable on “Legal Clinics in Ukraine: Current State of Affairs and Perspectives for Further Development,” an all-Ukrainian roundtable on “Legal Clinics in the Light of the Adoption of the Law on Free Legal Aid,” the 10th International *Journal of Clinical Legal Education* Conference, a seminar on “Legal Civil Aid in South-Eastern Europe,” a roundtable on the Law on Free Legal Aid, and a conference on “Freedom of Assembly: European Standards for Ukraine.”

DEVIATIONS IN THE IMPLEMENTATION OF THE WORK PLAN: Overall, FAIR conducted its activities in line within the work plan timeframes. Certain deviations were caused by problems influencing the process of judicial reform and legislative developments at large. The lack of political will, unpredictable Parliament activity, and the weakness of judiciary leadership all contributed to the challenges faced during the implementation of judicial reform.

Regional discussions on the draft amendments to the Law on the Judiciary and Status of Judges were planned to discuss the improved draft when it was submitted to the Verkhovna Rada. However, the single draft of needed amendments was not the major issue for policymakers. They preferred to come up with initiatives that addressed the topics individually. Due to uncertainty about the Verkhovna Rada’s activity and its priorities for the upcoming quarter, FAIR will review its plans and reflect next steps in the Work Plan for the next period.

EXPECTED RESULT 1.2: CONSTITUTIONAL REFORM RELATED TO THE JUDICIARY IS PURSUED IN AN INCLUSIVE MANNER

CURRENT STATUS OF AFFAIRS AND KEY ACHIEVEMENTS: President Yanukovych formed the Scientific Expert Group on Constitutional Assembly Preparation back in 2011 to undertake constitutional reform. This is an ad hoc body, on which academic and civil society organizations (CSOs) are broadly represented, that was authorized to develop the draft concept paper on Constitutional Assembly formation. FAIR managed to establish productive working relations with its leader, the first President of Ukraine, Leonid Kravchuk (1991-1994), and in the fall of 2011, provided comments on the draft Concept Paper to be considered during the finalization of the document.

On January 25 2012, President Yanukovych signed Order No. 31/2012 to approve the concept paper on Constitutional Assembly formation and operation. This document defined the objectives, tasks, principles, and procedures for the Constitutional Assembly’s formation and operation.

On May 17, 2012, President Yanukovych signed Order No. 328/2012 on the appointment of the Constitutional Assembly members. The Order approved the Regulations on the Constitutional Assembly’s operation, which defined its objectives, tasks, principles, and procedures. According to

Milestone Progress ER 1.2

- Concept paper for Constitutional Assembly is approved by the President of Ukraine.
- Regulations on the Constitutional Assembly and personal composition of the Constitutional Assembly approved by the President Yanukovych.
- Council of Europe expert Lorena Bachmaier conducted the Constitution of Ukraine gap analysis with a focus on the implementation of the rule of law principle.

the Regulations, the Constitutional Assembly is to consist of 100 highly reputable citizens of Ukraine who have professional experience in state building and legal drafting to be nominated by the National Academy of Sciences, scientific and higher education institutions, deputies' factions, deputies' groups in the Verkhovna Rada of Ukraine, political parties and non-governmental organizations, independent experts, and analytical centers, according to a set quota. Currently, there are 95 members of the Constitutional Assembly (opposition parties refused to submit their representatives).

Leonid Kravchuk was appointed as the Chairman of the Constitutional Assembly. The assembly currently consists of 95 members, including representatives of parliamentary factions and groups, political parties, the National Academy of Sciences, academic research institutions, and civil society organizations among others.

On June 20, 2012, the first plenary meeting of the assembly took place. The assembly formed seven commissions and elected the following commission heads;

1. Oleksandr Skrypniuk — Commission on Constitutional Order and Procedure for the Adoption and Enactment of Amendments to the Constitution of Ukraine
2. Volodymyr Butkevych — Commission on Rights, Freedoms, and Responsibilities of a Person and a Citizen
3. Anatolii Selivanov — Commission on the Rule of the People
4. Andrii Yermolaiev — Commission on the Organization of State Power
5. Vasyl Maliarenko — Commission on Justice
6. Vasyl Tatsii — Commission on Law Enforcement
7. Svitlana Seriohina — Commission on Administrative and Territorial Structure and Local Self-Government

The Coordination Council, the executive body of the assembly, includes heads of all commissions, Constitutional Assembly Secretary Maryna Stavniichuk, and Constitutional Assembly Chairman Leonid Kravchuk.

On September 21, 2012, the Constitutional Assembly approved its Rules of Procedure, the rules that govern the assembly's operations. It is envisaged that each Commission will develop a baseline report to consider the potential scope of changes to be introduced into the Constitution.

The Constitutional Assembly leadership requested FAIR support for three Commissions – the Commission on Justice; the Commission on Rights, Freedoms, and Responsibilities of a Person and a Citizen; and the Commission on Law Enforcement. In response to this request, FAIR asked European constitutional law expert Lorena Bachmaier to conduct a gap analysis of the current Constitution of Ukraine to identify provisions that were not in line with rule of law principle and needed improvement to meet Council of Europe (COE) standards. As a European legal scholar, she identified gaps and areas where the current Constitution of Ukraine needed to be modified to adhere to Ukraine's international commitments to respect the rule of law in all spheres of public life. She also recommended constitutional changes in human rights, public prosecution,



FAIR COP David Vaughn and first President of Ukraine, Chairman of the Constitutional Assembly Leonid Kravchuk at signing of the Protocol of Cooperation in Kyiv on September 20, 2012.

and justice-related areas. FAIR sent Ms. Bachmaier's report to the leaders of the Constitutional Assembly and members of its Commission on Justice for their consideration. FAIR is working to identify and recruit European constitutional process experts who will support the assembly through the whole constitutional reform process. FAIR will continue supporting the Constitutional Assembly's activity to secure the needed changes in the judiciary.

DEVIATIONS IN THE IMPLEMENTATION OF THE WORK PLAN: No significant progress was made under this task, because the Constitutional Assembly was formed on May 17, 2012. It started operation in June 2012, and FAIR will provide experts and technical support to the Assembly. FAIR was informed by representatives of the Presidential Administration's Office for Constitutional and Legal Modernization Affairs that a draft concept of the constitutional amendments will be developed by the end of 2012. FAIR will design and implement activities based on ongoing developments.

EXPECTED RESULT 2.1: UKRAINIAN JUDGES ARE APPOINTED ON OBJECTIVE, KNOWLEDGE- AND PERFORMANCE-BASED CRITERIA

CURRENT STATUS OF AFFAIRS AND KEY ACHIEVEMENTS: During the last reporting year, FAIR, in cooperation with the High Qualifications Commission (HQC), focused on improving the judicial selection process and the procedures for implementation of the second nationwide selection of candidate judges.

In January 2012, the HQC Chairman Ihor Samsin, on FAIR's recommendation, established a working group on improving the judicial selection process to analyze the results of the first national judicial selection process in 2011 and develop recommendations to improve the regulations governing judicial selection processes and procedures. The working group included representatives of the HCJ, Presidential Administration, National School of Judges (NSJ), MOJ, Verkhovna Rada Justice Committee, FAIR, and HQC.

In addition, at the HQC's request, FAIR involved local and foreign experts to analyze the results of the judicial selection process, which was conducted under new rules stipulated by the Law on the Judiciary and Status of Judges, in particular, the initial anonymous test (May 2011) and qualifications exam (June 2011). Experts analyzed regulations governing the initial anonymous test, the quality of the test questions, and statistical data from the first judicial vacancy application process to identify judicial candidates' age, sex, education, employment history, and other information.

Milestone Progress ER 2.1

- Held three working meeting with HQC.
- HQC formed working group to improve selection procedures for the first appointment of judges.
- Completed gap analyses of the judicial vacancy application, test administration, and scoring processes.
- Developed recommendations for improving the judicial vacancy application, test administration, and scoring processes.
- Conducted psychometrical analysis of the qualification exam and initial test.
- HQC members trained on case study evaluation methodology.
- Completed Handbook for test item developers.

Expert findings and HCJ recommendations were presented and discussed at four working group meetings in January and February 2012. Additionally the following topics were discussed:

- Improving background checks for judicial candidates (<http://nsj.gov.ua/ru/news/921/show/>);
- Improving judicial candidate anonymous test administration procedures, test content, and qualification exam structure (<http://vkksu.gov.ua/ua/news/trivae-robotu-z-udoskonalennya-protseduri-doboru-kandidativ-na-posadu-suddi-vpershe/>); and

- Improving the judicial competition procedure (<http://vkksu.gov.ua/ua/news/vidbulosya-ostanne-zasidannya-robochoi-grupi-z-udoskonalennya-protseduri-doboru-kandidativ-na-posadu-suddi-vpershe/>).

As a result of these discussions, working group members agreed on 16 recommendations to improve the judicial selection process, including the following:

- Promote the implementation of background checks at all stages of the selection process;
- Recommend that the HQC approve each test item entered into the test item bank;
- Consider using real court cases for the case study part of the qualification exam;
- Improve criteria for evaluating case studies and score each criterion separately; and
- Involve independent monitors/observers into judicial selection process.

From February 22 to 24, 2012, the HQC, with FAIR's support, conducted a seminar on the "Results of the First National Selection of Judicial Candidates: Lessons Learned, Ways of Improvement and Implementation of Initial Training of Candidate Judges" in Lviv (<http://vkksu.gov.ua/ua/news/24-lutogo-u-lvovi-zavershiv-robotu-mijnarodniy-naukovo-praktichniy-seminar/>). The seminar presented the results of a series of successful discussions conducted by the FAIR-supported HQC working group on improving the judicial selection process and experts' findings. Representatives of the HCJ, Presidential Administration, the National School of Judges (NSJ), MOJ, Verkhovna Rada Justice Committee, COJ, Supreme Court of Ukraine, High Commercial Court, High Administrative Court, High Civil and Criminal Court, law academies, as well as judges and international experts from seven countries attended the event. The participants focused on three key topics: improving the initial anonymous test for judicial candidates, development and implementation of initial training for candidate judges, and the development of a list of competencies for judicial candidates. At the seminar, experts from Lithuania, Poland, Georgia, the Netherlands, United States, France, and Hungary shared experiences from their respective countries related to judicial selection and training. Some of the recommendations from seminar participants included: (1) HQC members should evaluate and score the qualifications exam (*during the selection process in 2011, the examination commission included legal scientists, acting judges, and HQC members*); (2) allow candidates to use the legal database during the case study section of the qualification exam; (3) NSJ should develop a unified special training curriculum for all universities that will provide such training for judicial candidates, and (4) ensure that the NSJ has the capacity to control and oversee the training process. The HQC and FAIR processed these recommendations and updated the regulations governing selection process accordingly.

On May 20, 2012, at the NSJ's request, FAIR conducted first round of training for test question writers, at which the results of the first national anonymous testing of judicial candidates were presented (<http://nsj.gov.ua/news/1222/show/>). As a follow up to the event, and as requested by the HQC, on May 17 and 18, 2012, FAIR conducted training on "Methodology of Test Item Writing: Preparation, Validation, and Improving" for test question writers (<http://nsj.gov.ua/news/1353/show/>). Representatives of the NSJ and HQC participated in the event. FAIR short-term judicial testing and training expert Leonid Sereda and testing methodology expert Steven Bakker (via Skype) led the training. Additionally, Mr. Bakker developed a handbook for test question developers, which was presented and discussed during the event. The handbook covers crucial topics of developing test questions, namely, test blueprints, test methodology, and item analysis, the process of item creation, methodology for writing selected responses items, and constructed responses items. As a result of the training, test question writers received theoretical knowledge on the methodology of test item drafting and practical skills on test item writing; this helped them develop recommendations for a matrix/blueprint of the anonymous test (exam) for judicial candidates.

From April 19 to May 15, 2012, the HQC, in cooperation with NSJ and with support from FAIR, conducted three pilot tests to validate HQC's test question bank (<http://nsj.gov.ua/news/1211/show/>; <http://nsj.gov.ua/news/1236/show/>; <http://nsj.gov.ua/news/1297/show/>). Validated items later were included into the second national anonymous test for candidate judges.

On April 4, 2012, the HQC started the second judicial candidate selection process by posting an announcement on its website at <http://vkksu.gov.ua/ua/dobir-kandidativ-na-posadu-suddi-vpershe/ogoloshennya/28-berezhnya-2012-roku-ogoloshennya-pro-dobir-kandidativ-na-posadu-suddi-vpershe/>. Due to the large number of applicants, the deadline for applications was extended twice, ending on May 16, 2012. As recommended by FAIR, the HQC developed video guidelines on how to correctly fill in the anonymous test answer sheet (<http://vkksu.gov.ua/ua/news/rekomendatsii-kandidatam-na-posadu-suddi-vpershe/>) and sample test items from the previous national anonymous test to familiarize judicial candidates with the test's structure in advance (<http://vkksu.gov.ua/ua/dobir-kandidativ-na-posadu-suddi-vpershe/documents-pp/zrazki-testovih-zavdan-yaki-vikoristovuutsya-pid-chas-provedennya-anonimnogo-testuvannya-ispitu-kandidativ-na-posadu-suddi-na-viyavlennya-rivnya-zagalnih-teoretichnih-znan-u-galuzi-prava/>) and posted them on its website.

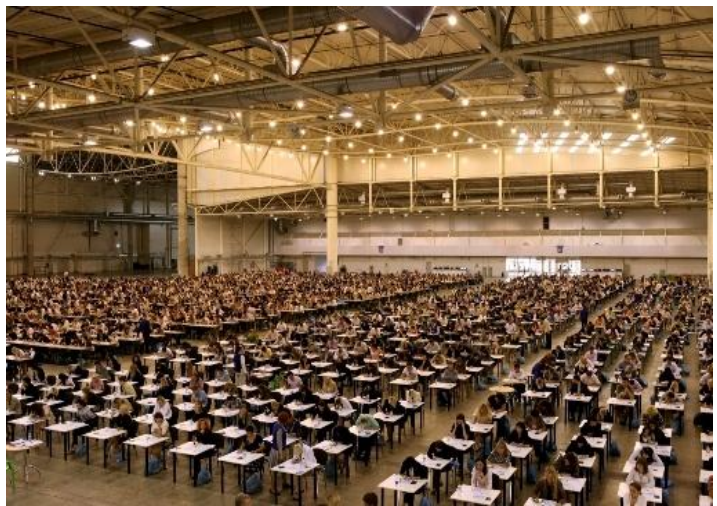
“USAID FAIR Justice Project is our (the HQC) reliable partner which tremendously supported the HQC in organizing the second national anonymous test and qualification exam of candidate judges.” -- Justice Ihor Samsin, Chair of the HQC.

With support from FAIR, the HQC implemented recommendations of the working group on improving the judicial selection process by amending the Regulation on the Procedure of the Judicial Anonymous Test

Administration posted on the HQC

website. Among the most significant

amendments were the possible involvement for NGOs to monitor administrative procedures for the anonymous test and oversee the process, along with the requirement to scan and verify judicial candidates answer sheets immediately after the test in the presence of NGO monitors, judicial candidates, and representatives of mass media.



3,453 judicial candidates taking the second national anonymous test in Kyiv on June 5, 2012.

On June 5, 2012, with FAIR's support, 3,453 judicial candidates participated in the second national anonymous test conducted by the HQC. To monitor the process, FAIR engaged professional test monitors who are in the process of drafting reports on the results of the monitoring, with recommendations on improving administrative procedures for the judicial anonymous testing process. In the next reporting year, these reports will be finalized and presented to the HQC for consideration.

Additionally, on June 9 and 10, 2012, the HQC, with FAIR's support, conducted a seminar on “Methods of Evaluation of Judicial Candidates’ Personal and Moral Qualities During the Qualification Exam”(<http://vkksu.gov.ua/ua/news/zavershiv-robotu-seminar-shodo-viyavlennya-osobistih-ta-moralnih-yakostey-kandidativ-na-posadu-suddi/>). The seminar included discussion of (i) the key personal and moral qualities of judicial candidates that should be evaluated in the

course of the qualification exam and (ii) proposed changes to the Regulation on passing the judicial qualification exam. Representatives of the HQC, MOJ, NSJ, National Commission of Ukraine on Public Morality, and FAIR short-term testing experts attended the event.

Recommendations from seminar participants included: (1) that the qualification exam should evaluate high cognitive levels of knowledge – the ability to analyze and apply legislation, ability to think logically, etc.; (2) that candidates should be given four case studies (one case study per jurisdiction); (3) to develop a clear order of case study evaluation, (4) to improve quality of the case studies, and (5) to develop methodology and standards for each case study evaluation.

On June 19, 2012, based on the seminar's results and at the request of the HQC and NSJ, FAIR short-term expert Sergiy Mudruk conducted a half-day training for test question writers with a short course on methodology of drafting test questions for evaluating higher cognitive levels of knowledge (<http://nsj.gov.ua/news/1498/show/>).

On August 16 and 17, 2012, the HQC, with support from FAIR, conducted training for the HQC members and staff on how to conduct and grade the qualification exam in Odesa. Representatives of the NSJ, judges, and psychiatrists participated in the seminar. During the event, FAIR short-term experts taught the HQC members how to develop evaluation criteria and work as a team while conducting a case study evaluation. As a result of the seminar, the HQC requested Mr.



Members of the HQC score the model case study during the seminar in Odesa on August 16 and 17, 2012.

Mudruk to conduct series of additional training courses on methodology of case study evaluation from August 30 to September 24, 2012. As a result of the discussion, 20 FAIR recommendations relating to the security of the exam, its structure, and evaluation methodology were incorporated into the Regulation on passing judicial qualification exam (<http://vkksu.gov.ua/ua/dobir-kandidativ-na-posadu-suddi-vpershe/documents-pp/polojennya-pro-poryadok-skladennya-kandidatami-na-posadu-suddi-kvalifikatsiynogo-ispitu-ta-metodiku-yogo-otsinuvannya-2012/>).

On June 6, 2012, the day after the judicial candidates anonymous test, the HQC decided that to pass the exam, candidates would have to score at least 63 points. 1,453 candidates passed the anonymous test and were admitted to take the qualifications exam, conducted by the HQC on September 11, 19, and 20, 2012. The exam consisted of two parts, designed to assess candidates' analytical and writing skills. It contained 120 multiple choice questions covering 9 areas of law and four written case studies.

Currently, the HQC is processing the results of the judicial qualification exam under the supervision of FAIR short-term experts. This year, the HQC members have graded the case studies themselves without the involvement of judges and a legal scientist. Because the HQC must verify about 6,000 case studies, this process will take extended period of time. The HQC expects to announce the examination results and the ranking list at the end of October 2012.

Finally, the HQC is planning to launch the third nationwide judicial selection in the end of 2012 through the beginning of 2013. According to HQC Chairman Ihor Samsin, this selection procedure will include six months of special training for judicial candidates. Mr. Samsin emphasizes the need

to develop competencies that should be evaluated during this special training for judicial candidates and the future qualification exam. FAIR will assist the HQC in developing and finalizing the list of judicial competencies and integrate them into relevant regulations.

DEVIATIONS IN THE IMPLEMENTATION OF THE WORK PLAN: FAIR experienced delays with supporting the HQC in drafting the list of judicial competencies that were supposed to be evaluated during the qualifications exam due to lack of consensus among HQC members on the subject. However, currently the HQC, on FAIR short-term experts' recommendation, has agreed to evaluate competencies related to candidates' professionalism, including candidates' higher cognitive levels (such as the ability to analyze and apply legislation, ability to think logically, and candidate's writing skills) during the qualification exam. In addition, Mr. Samsin confirmed the Commission's willingness to develop this list of competencies, which would be comprehensively evaluated during a special six-month training course for candidate judges. The HQC expects to implement this special judicial training course in 2013. FAIR will continue close cooperation with the HQC and other relevant stakeholders to develop and promote this list of judicial competencies for evaluation during the qualification exam.

EXPECTED RESULT 2.2: UKRAINIAN JUDGES ARE DISCIPLINED IN TRANSPARENT PROCESSES

CURRENT STATUS OF AFFAIRS AND KEY ACHIEVEMENTS: During this reporting period, FAIR supported the HQC in developing clear judicial discipline procedures. At the HQC's request, FAIR brought in international and European experts to analyze the judicial discipline process and the documents governing such processes. FAIR experts discussed with the HQC leadership these judicial discipline procedures, standards for initiating and conducting investigations of judicial misconduct, and recruitment and training of judicial discipline inspectors.

Following these discussions, the HQC, with FAIR's support, conducted a seminar on "Practical Aspects of Disciplinary Liability of a Judge" on December 9-10, 2011. Members and staff of the HQC, representatives of the HCJ, HAC, Supreme Court, FAIR experts Curtis DeClue and Judge José Cardoso of the Lisbon Court of Appeals in Portugal attended the seminar, and FAIR international expert Victoria Henley, the director and chief counsel of the California Commission on Judicial Performance, participated in the seminar via Skype. Participants discussed the HQC's regulatory documents that govern the disciplinary process along with ways to introduce modern information technologies and standardization to improve its effectiveness. Mr. DeClue and Mr. Cardoso shared international experience in organizing administrative and adjudicative procedures for disciplining judges. They also provided recommendations to improve disciplinary procedures in line with international and European best practices.

Milestone Progress ER 2.2

- Documented current practice within the judicial discipline process.
- Presented Amendments to the Draft Regulation on the Judicial Discipline Inspector Service for HQC consideration.
- Draft Regulation on the Judicial Discipline Process finalized and presented for HQC consideration (achieved, although this regulation is now called an instruction).
- Developed training curriculum and manual for judicial discipline inspectors.
- Developed import module enabling the posting of judicial discipline decisions to the HQC website.

The seminar resulted in several recommendations, including the following:

- Improving procedures for dismissing complaints that have no reasonable grounds for judicial discipline (as approximately 80 percent of complaints are groundless);
- Adopting regulations governing every stage of the judicial discipline process;
- Developing manuals for every stage of the judicial discipline process;
- Conducting trainings for new disciplinary inspectors;

- Developing clear standards for the evaluation of evidence for judicial discipline cases; and
- Developing more strict requirements for recruiting judicial inspectors.

FAIR also provided the HQC with necessary international and local expertise and other recourses to implement all the recommendations presented at the seminar. In particular, FAIR local experts Nataliya Akhtyrskaya and Vasyl Filatov developed a training curriculum for judicial discipline inspectors and a verification procedure manual for judicial discipline inspectors. To improve procedures for dismissing complaints that have no reasonable grounds for judicial discipline, with FAIR's support, the HQC established a working group to develop a set of regulations on judicial disciplinary procedures, from filing complaint to adjudication. As the judicial discipline procedure has three main stages, FAIR recommended developing separate regulations governing each stage. However, the working group drafted an Instruction on Verification Procedure and Decision-Making in Disciplinary Proceedings against Judges (the Instruction), covering all three stages of the disciplinary process. The draft Instruction describes procedure for verification of grounds for disciplining a judge well, but the registration and intake procedure and the procedure for opening and considering a disciplinary case are not described as well. To evaluate the draft Instruction and the draft Job Description for Disciplinary Inspectors and the Regulation on Service of Disciplinary Inspectors, FAIR recruited retired Supreme Court Justice Vasyl Filatov, a short-term local judicial discipline expert. Justice Filatov analyzed the above-mentioned documents governing the judicial discipline process and came up with several recommendations to improve the process.

At the HQC's request, FAIR developed an importing module for the HQC website, enabling automatic posting of judicial discipline decisions. Additionally, the HQC's IT Department plans to make appropriate settings in the case management system to install the developed modules by December 2012.

To learn the status, activities, and functions of disciplinary inspectors in various European judicial systems and present findings for the HQC's consideration, FAIR Judicial Accountability Coordinator Ashot Agaian attended the Third International Conference on Exchange of Experiences

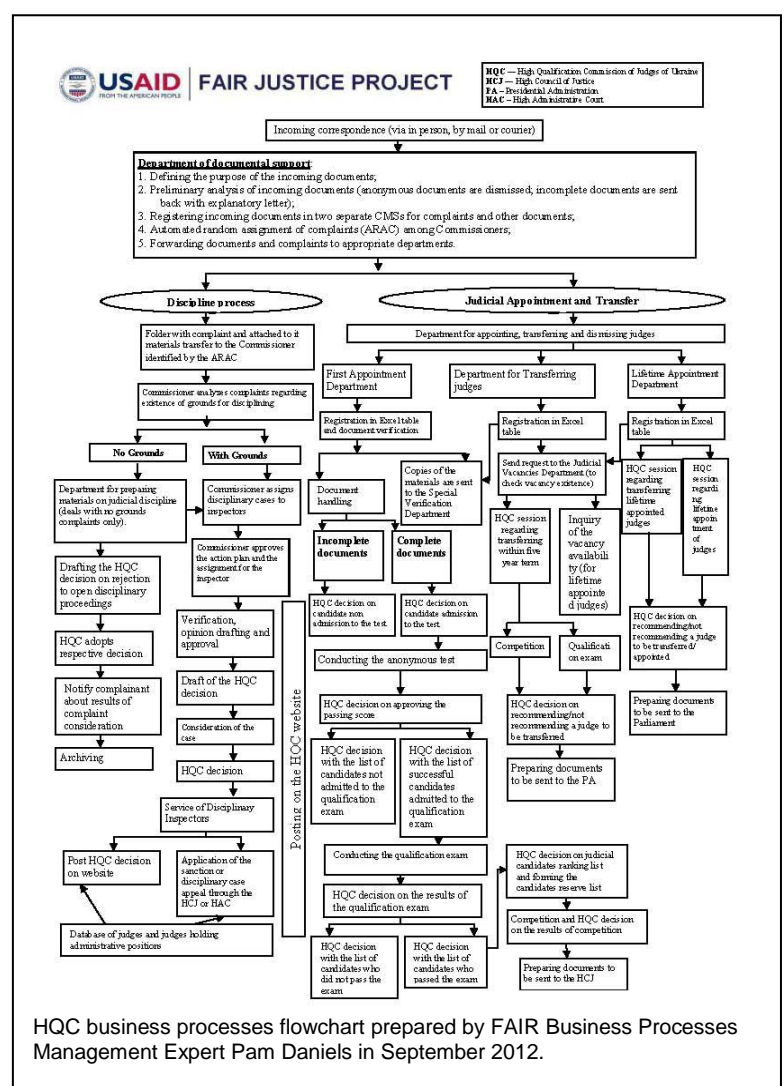
Between European Union Countries Concerning Relations in Various Judicial Systems Between the Functions of Inspectorates of the Ministry of Justice and the Councils for the Judiciary and/or Autonomous Government Bodies. The conference was held by the Italian High Council for the Judiciary in Rome on June 4-5, 2012. The conference brought together senior-level judicial leaders, judges, and disciplinary inspectors from Italy, Spain, France, Portugal, England, Wales, Scotland, the Netherlands, Belgium, Hungary, Romania, Albania, Bulgaria, Lithuania, Estonia, Turkey, and Egypt. At the conference, many relevant issues regarding judicial misconduct investigation were discussed. These discussions will lead to the application of common judicial investigation standards in various countries. FAIR presented all recommendations developed at the conference for the HQC's consideration. The HQC's leadership appreciated the recommendations and expressed its willingness to apply the European best practices to the practice of judicial discipline in Ukraine.



"About 60 % of HQC staff deal with judicial discipline. That is why improving judicial discipline procedures - from receiving complaints until reaching a decision in a disciplinary case - is extremely important for the HQC. We appreciate very much the USAID FAIR Justice Project assistance in this area." Justice Ihor Samsin, Chair of the HQC.

The HQC was interested in the international experience with judicial discipline, and at the HQC's request, FAIR conducted a Judicial Discipline Study Tour to the United States from June 17 to 28, 2012. Eight members of the HQC: HQC Chair Ihor Samsin, Lidiia Gorbacheva, Viktor Mikulin, Volodymyr Vikhrov, Anatoliy Martsynkevych, Viktor Shargalo, Mykola Pinchuk, Dmytro Sokurenko, Deputy Chief of the HQC Secretariat Nani Otroda, Chief of the Disciplinary Inspectors Department Vasyl Kosenko, two Disciplinary Inspectors — Liuchiya Tsymoh and Viktor Gevko, Deputy Head of the Council of Judges of Ukraine Raisa Khanova, and representative of the Verkhovna Rada Committee on Justice Antonina Gasanova participated in the Study Tour. During the visit, participants met with representatives of three U.S. Commissions on Judicial Conduct in Atlanta, Seattle, and San Francisco, to learn about U.S. best practices for judicial misconduct complaints, docketing, filtering, investigation, and adjudication. In addition, study-tour participants met with U.S. government officials and state and federal judges to learn about judicial election and appointment procedures in the U.S. HQC members were also able to observe firsthand the high-volume scanning, docketing, usage, and accessibility of electronic court (general jurisdiction) documents and related systems at the Snohomish County Superior Court Clerk's Office in Everett, Washington. This hands-on experience fostered an in-depth understanding of the value of electronic document management in the day-to-day business processes, procedures that would streamline the work of the HQC.

In September 2012, at the HQC's request, FAIR brought in U.S. Business Processes Management Expert Pamela Daniels to document current practices of the judicial discipline and selection processes in Ukraine. Ms. Daniels met with the representatives of all HQC departments and discussed the business processes related to judicial disciplinary and candidate selection proceedings. After analyzing the HQC's business processes, Ms. Daniels suggested developing a unified, integrated database to manage the data related to judicial discipline processes, judicial candidates' selection, judicial training, and transferring. The HQC recognizes the value of a high-volume electronic document management system to manage their high-volume functions and operations more efficiently, effectively, and transparently. Moreover, given the varying roles, responsibilities, and divisions of operation within the HQC, establishing a unified database is critical to meeting the need for accurate, timely, efficient, and transparent data.



In the next reporting period, FAIR will support the HQC in developing a unified integrated database and drafting regulations governing intake of judicial misconduct complaints. The HQC will also conduct the judicial misconduct investigations. FAIR will involve various NGOs to

analyze judicial discipline decisions and report the results to the HQC. Finally, FAIR will assist the HQC in conducting a public awareness campaign on the process of disciplining judges.

DEVIATIONS IN IMPLEMENTATION OF THE WORK PLAN: During the reporting period, FAIR planned to update and disseminate a leaflet on judicial discipline procedures with copies of the judicial misconduct complaint form, to all courts, through the SJA. To accomplish this task, FAIR issued an RFP to update all FAIR leaflets, including the leaflet on judicial discipline procedure. However, FAIR received only one application, which did not meet the RFP requirements. Currently, FAIR is working on an alternative solution to this matter and expects to accomplish this task by February 2013.

Another activity that was not performed in the reporting period is related to working with HQC representatives to develop and approve adequate regulations for registration and intake procedures concerning judicial misconduct complaints. After FAIR Business Processes Management Expert Pam Daniels worked with the HQC on documenting current practices, the HQC leadership supported her suggestion on developing a unified integrated database to manage all relevant data. As the registration and intake procedure will be changed when implementing the unified database, the HQC agreed to develop the respective regulations after the database is developed. In this case, the regulations will reflect the most relevant procedure for registration of judicial misconduct complaints.

EXPECTED RESULT 2.3: THE REGULATORY AND INSTITUTIONAL FRAMEWORK FOR JUDICIAL ACCOUNTABILITY AND INTEGRITY IS STRENGTHENED

CURRENT STATUS OF AFFAIRS AND KEY ACHIEVEMENTS:

During the reporting period, FAIR concentrated its efforts on assisting the COJ in amending the Code of Judicial Ethics to bring it in line with European standards of judicial conduct and Ukrainian legislation. FAIR supported a series of meetings of the Expert Group on Reviewing and Amending the Code of Judicial Ethics established by the COJ (the Expert Group). The Expert Group includes Judge Tetiana Kozyr of the High Commercial Court of Ukraine, and COJ Secretary Volodymyr Mazurok, retired Justice of the Supreme Court of Ukraine; Judge Valentyna Symonenko of the HCCC, and Judge Tetiana Chumachenko of the HAC. This support was carried out based on the Action Plan for updating the Code of Judicial Ethics, approved jointly by the COJ and FAIR in 2011. In particular, at the Expert Group's request, FAIR provided it with the text of documents governing judicial conduct in various European countries, namely, Slovenia, Lithuania, Macedonia, Estonia, England, Wales, and Germany. During the meetings, the participants discussed the previous recommendations made by UROL short-term expert Marilyn Holmes, to incorporate them into the Code of Judicial Ethics, and agreed on the structure for a new Code. The Expert Group decided that the new Code must be based on the U.N. Bangalore Principles of Judicial Conduct. As a result of this joint effort, the Expert Group finalized draft amendments based on the international standards of judicial conduct and submitted them to the COJ for consideration. The draft Code contains several innovative provisions, particularly regarding judges' recusal to secure judicial impartiality and the prohibition of ex-parte communication with one party or his/her representative in the absence of the other party. On March 23, 2012, the COJ approved the draft amended Code for further review by the judicial community.

Milestone Progress ER 2.3

- Held 7 stakeholder discussions on draft Code of Judicial Ethics.
- Revised amendments to Code of Judicial Ethics submitted to COJ for approval

"Thanks to FAIR, we have a possibility to discuss the draft Code of Judicial Ethics within the judiciary. This document is critically important for the whole judiciary as it is combines issues of judicial accountability, judicial impartiality and judicial responsibility." Judge Tetiana Kozyr of the High Commercial Court of Ukraine, Secretary of the COJ.

To support the COJ in reviewing and amending the Code of Judicial Ethics, FAIR organized an evaluation of the working draft Code of Judicial Ethics by the COE, U.S., and Ukrainian experts on its compatibility with international and European standards and best practices of judicial conduct as well as with Ukrainian anticorruption legislation. FAIR experts prepared three expert opinions, which were presented to the Expert Group. In those opinions, the experts provided several important recommendations for improving the draft Code. They suggested more specific and clear language, in particular, in regard to a judge's self-recusal; restrictions in accepting gifts, testaments, loans, or other services; and preventing judges from handling cases for family members. In addition, FAIR is preparing a commentary to the draft Code and plans to present it for the Congress of Judges' consideration in February 2013.

Also with FAIR's support, the COJ launched a series of regional discussions on the draft Code aimed at presenting it to judges and obtaining their support in developing amendments to the draft. The discussions were conducted in Odesa, Lviv, Ivano-Frankivsk, Chernihiv, Sevastopol, Kharkiv, and Donetsk. These events gathered judges from all regions in Ukraine and enabled the participants to discuss the provisions of the draft Code and suggest improvements. It should also be mentioned that a delegation from Maryland, including Judge Richard Bennett, Judge Catherine Curran O'Malley, Judge Mary Ellen Barbera, Circuit Court Administrator Pamela Harris, and State's Attorney John J. McCarthy, took part in the discussion during its visit to Odesa. Judge Richard Bennett gave a presentation on Judicial Ethics and Disclosure in the U.S. Federal Court System. Participants of the regional discussions recommended shortening the preamble to the draft Code, including language governing judges' out-of-court behavior, distinguishing between one-time and systematic violations of the Code's provisions, and defining in the text of the Code which violations are subject to disciplinary sanction.



Participants of the roundtable discussing the draft Code of Judicial Ethics in Ivano-Frankivsk on July 13, 2012.

As a result of these regional events, the Code was widely discussed and accepted by the judicial community. Judges participating in all regional roundtable discussions supported the suggestion that the new Code be based on the U.N. Bangalore Principles of Judicial Conduct and developed recommendations to the draft Code.

The draft Code is being actively discussed among the judiciary on a web forum launched by the COJ, following FAIR recommendations in February 2012. In accordance with action plan for updating the Code of Judicial Ethics, the COJ will analyze all the suggestions when preparing the Code's final draft.

FAIR will continue supporting the COJ in amending the Draft Code and the commentary to the Code in order to be approved by the Congress of Judges in 2013.

DEVIATIONS IN IMPLEMENTATION OF THE WORK PLAN: In the previous reporting period, FAIR planned to support the COJ's institutional capacity through developing a communications strategy, including the design and launch of a COJ website that will raise public awareness about issues related to judicial self-governance. FAIR held several meetings with the COJ leadership to discuss steps to be taken and agreed that the COJ should come up with a website concept, after which

FAIR would be able to issue RFPs to develop it. However, the COJ could not come up with a concept for the website, and FAIR was forced to postpone development

EXPECTED RESULT 3.1: THE SKILLS AND COMPETENCIES OF UKRAINIAN JUDGES ARE BOLSTERED THROUGH MODERN, DEMAND-DRIVEN INITIAL AND ONGOING JUDICIAL TRAINING PROGRAMS

CURRENT STATUS OF AFFAIRS AND KEY ACHIEVEMENTS: In the reporting period, the FAIR team continued to support the NSJ, which “*shall ensure training of highly skilled personnel for the judicial system of Ukraine*” (Art. 80 of the Law on the Judiciary and Status of Judges of Ukraine), in creating sustainability and building capacity to provide judicial candidates and current judges with modern, comprehensive, and highly effective training programs.

To do this, it was necessary for FAIR to identify the NSJ’s real needs as a newly established institution before providing any assistance or support in building its institutional capacity; delivering training programs for judge-faculty, trainings for staff on strategic planning, and human resource management, or providing technical, material, or financial support. After several meetings and negotiations between the FAIR team and the NSJ leadership, it became clear that the NSJ’s management does not know or fully understand what it needs to do to create an effective and well-organized institution supporting a highly professional judicial cadre in Ukraine.

To help the NSJ clarify this, FAIR recruited two experts: Mary Fran Edwards, former Deputy Director of the (U.S.) National Judicial College in Reno, Nevada, and Daniel Chasles, Secretary General of the National School of Magistrate of France, to conduct an assessment of the NSJ’s institutional needs, as well as its initial and ongoing training needs. These experts widely analyzed the problems and challenges facing the NSJ after a series of meetings with the leadership of the NSJ and HQC and representatives of the HCJ, Academy of Prosecutors of Ukraine, Ukrainian Bar Association, and other donor organizations and institutions that deal with the NSJ and training for judges.

In August 2012, FAIR presented the NSJ and HQC with the Institutional and Training Needs Assessment Report, prepared by FAIR experts. Based on the best international and European practices, the report provides several key recommendations to improve the operations of the NSJ with FAIR support, including developing a mission statement, a strategic plan for the next five

Milestone Progress ER 3.1

- Completed institutional needs assessment of NSJ (achieved).
- Completed Judicial training needs assessment on behalf of the NSJ (achieved).
- Publish second edition of the Judicial Opinion Writing Handbook (in process).
- Working group developed the curricula for the judicial candidates’ initial training program (not yet achieved). We changed this milestone to “Based on the EU Twinning project “Support to the Academy of Judges of Ukraine” the model program for initial training designed and edited by practitioners of Ukraine.”



FAIR COP David Vaughn, HAC Chief Judge Ihor Temkizhev and Advisor to the President of Ukraine - Head of Presidential Administration Main Office for Constitutional and Legal Modernization Affairs Maryna Stavniichuk during the conference “Elections – 2012: Application of Law” in Kyiv on June 8, 2012.

years, and action plan for the upcoming year; audit of the NSJ leadership's management skills; and enhancing the NSJ's capacity to develop its faculty and design, implementation, and evaluation of training programs. At the NSJ and HQC's request, FAIR will support these institutions in implementing the abovementioned recommendations in the next reporting period.

FAIR and Ukrainian author Roman Kuybida prepared the final draft of the second edition of the *Judicial Opinion Writing Handbook*, and FAIR involved Ukrainian judges and NSJ faculty for their review and comment. FAIR will disseminate an electronic version of the Handbook to the relevant stakeholders in January 2013.

FAIR supported Ukrainian judges in preparing to address the challenges they faced after the new legislation was adopted, in particular, the Law on the Election of Members of the Parliament of Ukraine, dated November 17, 2011, and the Criminal Procedure Code (CPC), dated April 13, 2012.

On June 8, 2012, in cooperation with the HAC and the USAID-funded International Foundation for Electoral Systems (IFES)-Ukraine, FAIR conducted the conference "Elections – 2012: Application of Law." HAC Chief Judge Ihor Temkizhev, presidential advisor and head of the Presidential Administration's Main Office for Constitutional and Legal Modernization Affairs Maryna Stavniichuk, Member of Parliament Yurii Kliuchkovskiy, a President of the Association of Members of Parliament of Ukraine Oleksandr Barabash, Deputy Head of the Central Election Commission of Ukraine Andrii Magera, and Volodymyr Kovtunets a former MP and an expert from the Electoral Law Institute, all participated in the conference. Eighty attendees – judges of appellate administrative circuits of Ukraine – had the opportunity to discuss the novelties of the new Law on the Election of Members of the Parliament of Ukraine, exchanged opinions on the topical issues of interpretation of the law, and on ensuring the equal application of the law by courts in light of Ukraine's obligations to ensure free parliamentary elections.

This event launched a series of nine nationwide regional seminars that FAIR and IFES jointly conducted in June and July of 2012 in all of Ukraine's appellate administrative circuits. About 600 judges and court staff representing 274 courts from all oblasts of Ukraine participated in these seminars. At these seminars, they learned the fine points of how to apply the new election law to election disputes

(http://www.vasu.gov.ua/ua/news_vasu.html?_m=publications&_c=view&_t=rec&id=2413).

During the discussion of the results of the regional seminars at the September Rule of Law Implementers Meeting, HAC Deputy Chief Judge Mykhailo Tsurkan thanked the FAIR team for its professionalism in preparing and conducting these events. IFES chief of party David Ennis expressed his gratitude to FAIR team for their cooperation on these training courses for judges and said that it had been a pleasure to work with the project. He mentioned that they received positive feedback from the post-test surveys. Many participants said that this kind of training should be held before every election. The printed materials were also well received.

On May 14, 2012, President Yanukovich signed the new CPC, which comes into force in November 2012. Judges sitting on criminal cases will now need intense training on how to apply the new code. The NSJ needed an emergency training plan for 2012 to meet these challenges. To support the NSJ in creating one, FAIR organized a series of coordinating meetings for international donors and the NSJ to identify priority areas for training and build a team of judges and teachers to train their colleagues on the new code.

As a result of these meetings, on July 11 and 12, 2012, in cooperation with the U.S. Department of Justice's Office of Overseas Professional Development, Assistance, and Training (OPDAT), U.S. Embassy in Ukraine, and the NSJ, FAIR conducted a roundtable to discuss the new Code and

develop common approaches to the interpretation of its controversial provisions. The roundtable gathered 110 participants: potential authors of the commentary to the Code, scientists from all of Ukraine's leading law schools, judges of the Supreme Court, HCCC, appellate and general courts of first instance, representatives of the MOJ, Ministry of Interior, and General Prosecutors Office, the HQC, lawyers, and Ukrainian and international experts (<http://nsj.gov.ua/news/1469/show/> and <http://nsj.gov.ua/training/judges/1493/show/>).

Cooperation with Ukrainian partners also includes providing the NSJ with expert support in forming the team of judges-trainers who, after mastering the code and principles of its interpretation, will be able to train their colleagues in all regions of Ukraine. The roundtable discussion was preceded by two Training of Trainers (ToT) sessions for 51 judges on adult teaching methods conducted from June 18 through 23, 2012 in Odesa. Judges were taught teaching methods, acquired skills to develop training materials, as well as methods to train their peers, using different styles and teaching techniques (<http://nsj.gov.ua/news/gallery/1437/show/>).

Another event to serve this aim was a one-week ToT “New Criminal Procedural Code of Ukraine: Learning, Interpreting, Applying,” which FAIR conducted jointly with the OPDAT and the Council of Europe (COE) under the European Union (EU)-COE Joint Program “Reinforcing the Fight Against Ill-Treatment and Impunity,” and NSJ (<http://nsj.gov.ua/news/1610/show/>) from September 17 to 22, 2012, in Sevastopol. The team of 59 judge/trainers was trained on the substantive issues concerning the ideas behind the CPC, its new features, sources for interpretation of the new Code, implementation issues related to the case law of the European Court of Human Rights (ECtHR), the adversarial system of criminal procedure, techniques for managing criminal proceedings effectively and how to address common ethical challenges.

During the training, Nevada District Court Judge Philip Pro and John Engstrom and Mary Butler, legal advisors of the U.S. Embassy in Ukraine, shared the American experience with the participants. The COE was represented by the two international experts who had previously worked on the new CPC, Eric Svanidze and Lorena Bachmaier. Ukrainian speakers expressing views on implementation of the new CPC included Supreme Court Justices Bohdan Poshva and Yelyzaveta



Judges-trainers are doing the exercise with a factual scenario about court options for non-compliance with obligations to disclose evidence to the defense during the ToT “New Criminal Procedural Code of Ukraine: Learning, Interpreting, Applying”, in Sevastopol on September 17 - 22, 2012.

Kovtiuk, HCCC Judge Stanislav Kravchenko, and retired Supreme Court Justice Olga Shapovalova. During the question-and-answer sessions, participants had the opportunity to exchange opinions on new concepts and provisions in the new code, tried to clarify its most disputed parts, and had a unique opportunity to receive answers from international experts, members of the Working Group that drafted the Code, and high-level judges.

The co-organizers provided participants with a set of hard copy and electronic handouts that included PowerPoint presentations prepared by experts, 17 case studies, texts of the CPC and ECHR, other practical materials such as charts on consideration of a case under the new CPC,

examples of draft motions and orders in line with the new procedure, abstracts of relevant legislation, the COE's Legal Opinion on the draft CPC and adopted Code, and J. MacBride's book *Human Rights and Criminal Procedure: Case Law of the ECHR*. The organizers provided participants with procedural documents used in criminal proceedings in the United States and unified court templates, developed by FAIR, OPDAT, and NSJ, to be used by judges to speed up the process (home arrest order, ban release, plea agreement, court approval etc.) after the new CPC comes into force.

According to post-training evaluation forms, participants and the international and national experts who attended considered the ToT to be "one of the most successful in-depth training activities organized for judges in recent years."

Other findings reveal that from 70 to 97.5 percent of judge/trainers considered the topics of the ToT to be "very important"; 75-92.5 percent said that issues were covered in a clear, effective, and comprehensive way; 77.5-92.5 percent said that the handouts were useful; 75-87.5 percent said that they learned new knowledge and skills, and 97.5 percent are planning to implement the knowledge and skills in their daily work and to train other judges on CPC nationwide. The judge/trainers also proposed to hold an additional ToT two months after the Code enters into force, focusing especially on the problems that might arise in implementing the new CPC.

After the ToT in Sevastopol, some judge/trainers conducted their own one-day training courses in the courts of appeals and regional branches of the NSJ, and they noticed that general-court judges differed in their understanding of the new CPC's provisions (<http://nsj.gov.ua/news/gallery/1734/show/>). "Judges understand the same provisions of the CPC differently; for example, 46 percent of participants said that the CPC gives more power to prosecutors, while 54 percent believe that it gives them less powers," said Halyna Stankovska, a judge/trainer from the Chernivtsi Oblast Appellate Court. This confirms the need to give Ukrainian judges uniform training on the new CPC.

Finally, FAIR, in cooperation with OPDAT, is developing a CPC-based benchbook. In December 2012, each judge hearing criminal cases will receive this book, along with step-by-step instructions on how to implement the new CPC in daily work.

DEVIATIONS IN IMPLEMENTATION OF THE WORK PLAN: During the reporting period, at the NSJ's request, FAIR planned to establish a working group to develop the curriculum for the judicial candidates' initial training program. Before doing so, FAIR analyzed the results of support provided to the former Academy of Judges (the present NSJ) by other international donors. This analysis showed that other donor organizations like the EU Twinning Project "Support to the Academy of Judges of Ukraine," Joint Program between EU and COE "Transparency and Efficiency of the Judicial System of Ukraine," and the COE Program "Eastern Partnership Enhancing Judicial Reform in the Eastern Partnership Countries" succeeded in assessing the need for initial and ongoing training of Ukrainian judges and provided key recommendations to enhance the NSJ's capacity to develop its faculty to design, implement and evaluate training programs. On the other hand, the NSJ did not adopt these recommendations, and it still lacks effective training programs. Taking all this into account, FAIR changed the milestone "Working group established to develop the curricula for the judicial candidates' initial training program" to "Base on the EU Twinning project "Support to the Academy of Judges of Ukraine" the model program for initial training designed and edited by practitioners of Ukraine." Thus, FAIR will continue to seek close cooperation with other donors to combine efforts and resources to support the NSJ in developing a concept and educational programs for judicial candidates and Ukrainian judges.

EXPECTED RESULT 3.2: JUDICIAL OPERATIONS ARE EVALUATED AND FUNDED ACCORDING TO AN OBJECTIVE ASSESSMENT OF NEEDS AND PERFORMANCE

CURRENT STATUS OF AFFAIRS AND KEY ACHIEVEMENTS: In Year 1, under Objective 3, FAIR focused on developing objective criteria to measure and improve court performance and on building the SJA's capacity to use this data to develop a viable long-term plan for the further development of the judiciary and to formulate and substantiate needs-based budget requests. FAIR built its activities on the outcomes of its predecessor UROL project, under which the COJ publicly admitted its willingness and commitment to develop and further implement a national standards-based court performance evaluation system.

In cooperation with the COJ and the SJA, FAIR supported the development of this system by providing expertise, technical assistance, information, coordination, and logistics support to the Court Performance Evaluation Working Group (CPE Working Group), the SJA Subgroup for Developing Court Performance Standards of the Working Group on Innovations (SJA Subgroup), and 13 pilot courts identified in the middle of this reporting period.

Five joint meetings of the CPE Working Group and SJA subgroup were held during the reporting year, at which representatives of the COJ, SJA, HCCC, HAC, courts of general jurisdiction, administrative and commercial courts, FAIR, and Ukrainian and international court performance evaluation experts discussed the development of national court performance standards. This activity, supported by the technical assistance of FAIR court performance experts, resulted in the developing, improvement, and finalization of pilot testing of the standards-based draft court performance evaluation framework (CPE framework). The draft framework includes four quality areas – efficiency of court administration, timeliness of court proceedings, quality of court decisions, and court users' satisfaction. It contains 24 court performance evaluation criteria and more than 70 indicators to measure court compliance with these criteria. The proposed draft CPE framework unites three mechanisms of court performance evaluation, including court internal performance evaluation (survey of judges and court staff, expert analysis of court decisions and timeliness of court proceedings), court external performance evaluation through Citizen Report Card (CRC) surveys of court visitors, and analysis of available court statistics. The court performance evaluation tools that were developed include questionnaires for court staff, judges, and court users; a court decision analysis form; and a timeliness of case consideration analysis form.

Milestone Progress ER 3.2

- Developed draft framework for court performance standards and defined four quality areas.
- Performance measurement tools with court performance evaluation criteria and indicators are developed for each quality area in the framework.
- Developed guidelines for applying the performance measurement tools.
- Trained 46 representatives of pilot courts and SJA in the implementation of court performance evaluation.
- Tested Framework for court performance standards in 13 pilot courts.
- Completed assessments of the budgeting and budget justification processes; drafted recommendations for improving each (achieved).
- Prepared methodology for the collection of statistical data and a set of relevant tools required to develop case weighting standards and submitted to the SJA/COJ for review (achieved).
- Discussed case weights results from case weighting study, and validated and submitted results for SJA/COJ review (in progress).

The CPE Working Group selected 13 pilot courts to test the draft performance evaluation framework, including nine first instance courts and four courts of appeals. The 13 pilot courts represent three jurisdictions – general, administrative and commercial, and six oblasts of Ukraine.

FAIR trained 46 pilot-court representatives who implement court performance evaluations in following topics:

- The purpose, goal, and objectives of court performance evaluation;
- Internal court performance evaluation modules – Court Management, Timeliness of Considering Cases, and Court Decision, and their implementation by designated court staff;
- The external court performance evaluation module – Court Users Satisfaction – the role of court staff in implementing it;
- Data collection and data entry;
- Comparative analysis of court internal performance evaluations and court external performance evaluations; and
- Preparation of court performance evaluation reports.

The 13 courts mentioned above implemented pilot testing of the draft CPE framework. Each court selected an evaluation team consisting of judges, retired judges, and court staff. The evaluation teams conducted internal evaluations of the efficiency of court administration, timeliness of court proceedings, and quality of court decisions. Simultaneously, these 13 courts participated in the external court performance evaluation, using CRC surveys as described under Expected Result 4.3 in this report.

At the time this annual report was being prepared, three courts had fully completed pilot testing of the CPE framework, including assessment, data collection, data entry, analysis, and report preparation. Six courts had completed all steps from assessment through data analysis and are now in the process preparing their reports. Four courts have completed their assessments and are now entering and analyzing the data.

The following numbers demonstrate the process of testing of CPE framework in the 13 pilot courts:

- More than 350 judges and 1,300 court staff participated in the survey on the efficiency of court administration, which evaluated working conditions, the leadership capacity of chief judges and chiefs of staff, efficiency of utilization of available funds and material resources, level of implementing judicial self-governance, relationships in the team, the fairness and reasonability of distribution of authority and responsibility, and other aspects of court administration;
- Evaluation teams analyzed documentation on more than 1,900 cases, assessing duration of case consideration, its compliance with procedural timeliness, and reasonability;
- Evaluation teams analyzed more than 1,900 pilot court decisions, assessing fullness of application of legislation, correctness of evaluation of legally significant factual background, completeness of examination of available evidences, completeness and clearness of an operative part of decision, quality of writing and other criteria; and
- More than 1,500 court visitors answered CRC surveys questions in the 13 pilot courts, contributing to the external evaluation of access to court, the level of comfort in the courthouse, timeliness of considering cases, completeness and intelligibility of information, quality of court decision, and the compliance of judges and court staff with professional standards.

As mentioned above, three of the 13 courts have completed their reports on CPE pilot testing. Thus, in this annual report, we can provide selected illustrative CPE data for these three courts. To illustrate the effectiveness of proposed evaluation modules, we select those CPE indicators that confirm each other in various evaluation techniques; e.g., internal evaluation and external evaluation.

- In its internal court performance evaluation, the Ivano-Frankivsk Oblast Court of Appeals analyzed 150 court decisions and scored the “Possibility to understand views and opinion of the court by a person without legal education” as 4.39 out of 5 and “Possibility to understand views and opinion of the court by a person who lost the case” as 4.70 out of 5. In the meantime, as part of the external performance evaluation, in CRC surveys, court visitors whose cases had already been decided were asked to evaluate the clarity of the decisions in their cases and whether they were easy to read. The average CRC score on this question is 4.88 out of 5. This sample demonstrates how the different evaluation techniques in the proposed evaluation framework complement one another.
- Another example from Ivano-Frankivsk Oblast Court of Appeals is on the timeliness of court proceedings. CRC survey respondents ranked this area of court performance as the lowest of all the questions, at 4.11 out of 5. In the meantime, in its internal performance evaluation, court experts discovered that court considers only 55 percent of cases are considered on schedule, 19 percent of cases are slightly behind schedule, and in 26 percent of cases there are major delays in consideration. This is a good example of how different court performance evaluation techniques work together.
- In the successful and high-quality performing Chornobayivsky Raion Court of Cherkassy Oblast, this year’s CRC surveys found a significant decrease in court users’ satisfaction. In this year’s the overall court performance evaluation, visitors scored 4.44 out of 5, compared with 4.65 last year. The most problematic areas of court work for this court according to CRC surveys are timeliness of court proceedings (a 0.57 decrease) and quality of court staff work (a 0.48 decrease). The internal court performance evaluation provides specific data that illustrate the reasons for this decrease: court staff are very skeptical about their opportunities for professional development (3.9 out of 5) and prospects for professional growth (3.6). Court staff also admitted cases of favoritism in human resource management and complications in court operations caused by the current case management system. Judges and court staff also admitted that the court does not have enough staff to support proper and timely case consideration. Thus, the pilot testing of the CPE framework demonstrated a clear chain of issues from lack of court staff motivation to decrease in court users’ satisfaction.

In the next program year, FAIR will support the 13 pilot courts in completing their reports on the pilot testing of CPE framework, prepare summary reports, and submit the CPE framework to the COJ and SJA for consideration and approval.

This year, to give Ukraine’s judiciary the tools to effectively formulate and substantiate data-driven, needs-based budget requests, develop SJA’s capacity to present and defend budgets, and improve justice sector resource management efficiency (including procedures for preparing court budgets), FAIR conducted an in-depth detailed expert assessment of the current budgeting processes. Key recommendations resulting from the assessment included the following:

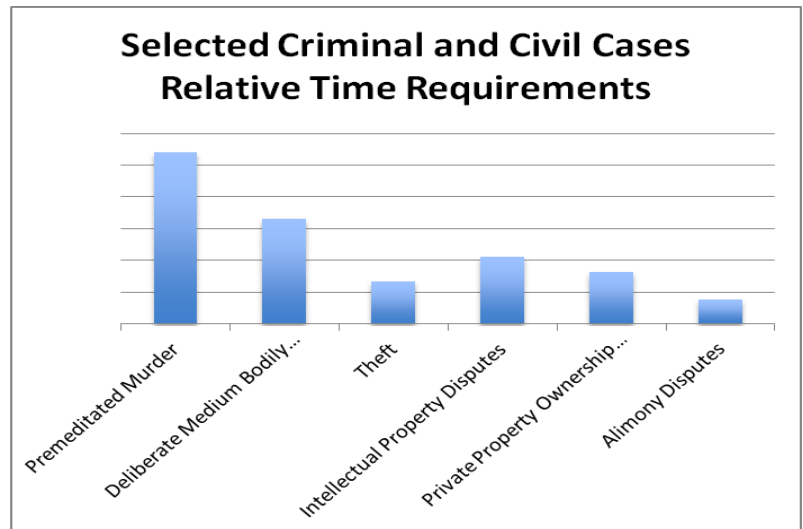
- Submit the judiciary’s budget directly to the Parliament, bypassing the Ministry of Finance and the Cabinet of Ministers;
- Increase the role of judicial self-governance bodies in preparing and submitting the judiciary’s budget request;
- Allow courts greater authority in the disposition of their budgets and allow the courts themselves to collect court fees directly.

Based on FAIR’s recommendations, the SJA has undertaken the ambitious goal of lobbying for the submission of its budget request directly to the Parliament. FAIR will closely monitor any progress in this area and provide support as appropriate, in coordination with ER 1.1.

To provide the judiciary of Ukraine with a set of objective and solid indicators for the preparation of budget requests, FAIR also worked with a short-term case weighting expert from the Administrative Office of the U.S. Courts to design a case-weighting study for the Ukrainian judicial system. FAIR conducted a detailed assessment of efforts previously undertaken by Ukraine's judiciary to establish a system of case weights and collected information to map processes and major stages of cases in courts and major case types to begin designing a three-tier case-weighting study. Based on the information collected, FAIR designed the study, which included methodology and relevant tools. In consultation with the SJA and COJ, FAIR determined that trial courts of civil and criminal jurisdiction would be the best place to start implementing the study, given the heavy caseload and the diversity of the types of cases these courts handle.

In the first round of the study, the chief judges of all 665 trial courts have been asked to complete a self-evaluation questionnaire to estimate the amount of time they usually spend for considering various types of cases at all the stages of consideration. The data from the questionnaire was used to prepare a draft of the relative time requirements for different case types and to finalize the toolkit for the study's second round, during which, over the course of 1.5 months, all the judges of 84 courts (selected as a representative sample of all general jurisdiction trial courts of Ukraine) will be required to keep track of their daily activities on a specially developed questionnaire. The second round of the survey is scheduled to be launched on October 22, 2012, and to end on November 29, 2012. FAIR will analyze the data from both surveys and prepare the preliminary weights of cases by type. Afterward, FAIR will validate the results of the study through a series of focus groups, and then submit it for approval to the COJ and SJA. The implementation of the survey has been approved by decision of the COJ No. 50 of September 21, 2012.

"I am impressed with how thoroughly this study was designed, and that it really takes into account every aspect of a judge's daily work," said Judge Raissa Khanova, Deputy Head of the COJ.



SJA and court staff at the seminar "Internal Court Audit and Preparation of Court Budget Requests" in Yevpatoria, Crimea, on September 19, 2012.

FAIR also supported the SJA in conducting a three-day training seminar in Yevpatoria, Crimea, for 125 SJA and court staff from all of Ukraine on how to prepare court budget requests and conduct internal court audits. This seminar was designed by the SJA to train all staff with budgeting responsibility in various aspects of court budgeting and audit under the requirements of the new Law On the Judiciary and Status of Judges.

To enhance the SJA's ability to process and analyze statistical and budgeting data and to build its capacity to implement the case-weighting study and similar studies, FAIR procured two packages of specialized analytical software (SPSS) for the SJA, and trained staffers from the SJA's Department for Statistics and Case Management on how to use this software.

DEVIATIONS IN IMPLEMENTATION OF THE WORK PLAN: Development of the CPE framework is two months behind schedule. The development of CPE framework and start of its pilot testing took place in accordance with the Work Plan, but pilot testing took longer than expected. There are several reasons for this delay:

- The CPE framework is very detailed, comprehensive, and consists of an overwhelming number of indicators. FAIR explained this to the CPE Working Group and suggested cutting the volume of data, but Working Group members chose to test the framework in the current large version and make cuts only after the complete results of pilot testing are in.
- Courts do not have enough staff to implement current internal evaluation modules rapidly. In particular, they don't have enough people to enter the data, calculate indicators, and analyze them. This delay is reinforced by the summer vacation period, when courts have even fewer staff, and the increased workload once the summer is over.
- Courts are not used to measuring their own performance with such indicators, and calculating simple things like percent age, average value, or simple index score is sometimes an issue for court staff.

To prevent such delays in the future, FAIR will facilitate simplifying current draft of CPE framework, strongly suggest avoiding conducting internal court performance evaluations in the summer, and seek to provide additional training for court staff in performance measurement, specifically, data processing and analysis.

FAIR expected to complete implementing the case-weighting study before the end of this reporting year, but completion of the first round of the study was delayed by 1.5 months due to the extended time it took to collect and analyze the data, summer vacations, and by SJA's semiannual reporting, which reduced the SJA's capacity to process the data more quickly. FAIR expects to complete all major aspects of the study by the end of January 2013 to allow time for the presentation of results to the Conference of Judges, which is currently tentatively scheduled for early February.

EXPECTED RESULT 3.3: THE SJA'S CAPACITY TO REPRESENT AND SUPPORT THE DEVELOPING NEEDS OF UKRAINE'S JUDICIARY IS STRENGTHENED

CURRENT STATUS OF AFFAIRS AND KEY

ACHIEVEMENTS: This reporting period, the FAIR team supported the preparation of a strategic plan for the judiciary.

On December 6-7, 2011, the COJ, SJA and FAIR conducted the first ever international conference on strategic planning for the judiciary. A strong, independent, and efficient judicial system is impossible without a coordinated, agreed-upon strategy and

Milestone Progress ER 3.3

- Drafted and discussed strategic plan by key stakeholders who participated in 17 focus groups, conducted conference on strategic planning, and an open space event.
- Printed manual on Human Resource Management and sent to all courts (in progress).
- Conducted 3 trainings on Human Resource Management for court chiefs of staff (in process)

detailed implementation plan, supported by both judicial leadership and court administration personnel. The conference promoted the development of a strategic plan that will include core values, principles, and areas of administration, to be the primary focus for the next three years, and an action plan with necessary steps to achieve progress in identified areas. Conference speakers included Ukrainian and international experts on strategic planning for the judiciary, who engaged judges and court staff throughout Ukraine and representatives of all three branches of government in a discussion on the importance of strategic planning for the judiciary. Keynote speaker U.S. Federal District Court Judge Charles Breyer, Chair of the Committee on Judiciary Planning of the U.S. Judicial Conference (2008-2010), kicked off the conference by stating that, “The judiciary plays a unique role in a democracy; unlike the legislative and executive branches of government, the judiciary is not elected. Unlike the legislative branch, the judiciary does not have the power of the purse. Unlike the executive branch of government, the judiciary does not have the force to implement its decisions. The power of the judiciary rests solely upon the acceptance of its role by the citizens it serves. Therefore, without respect for its authority, it becomes powerless. The ability of the judiciary to fulfill its constitutional role depends on implementation of a strategic plan. The successful implementation of this plan is of crucial importance in developing respect for the judiciary.” At the end of the conference, Supreme Court Justice Yaroslav Romaniuk, Chair of the COJ, aptly stated, “We are not going to leave the conference empty-headed. We will take some knowledge with us and avoid mistakes and learn from existing experience.”

Building on the results of the strategic planning conference mentioned above, FAIR, together with representatives of the COJ and SJA, conducted focus-group discussions with judges and court staff in Ivano-Frankivsk (November 23, 2011), Lviv (November 25, 2011), Odesa (February 3, 2012), Kharkiv (February 10, 2012), and Donetsk (February 29, 2012). These discussions focused on an analysis of the strengths, weaknesses, opportunities, and threats related to the judiciary and judicial reform, and highlighted key themes, including weak judicial self-governance, political interference into judicial processes, a flawed case assignment system, poor understanding and enforcement of judicial ethics, and low wages contributing to high turnover among court staff.

Following five focus-group discussions on March 19, 2012, FAIR, in cooperation with the COJ and the SJA’s Working Group on Innovations, conducted a national Open Space Conference to discuss a strategic plan for the judiciary that further advanced the participatory drafting of a strategic

plan by including more than 100 representatives of judicial stakeholders throughout Ukraine. The participants included judges and court staff throughout Ukraine, as well as representatives from the SJA and other branches of government, and civil society organizations. This innovative format helped identify new goals and areas that complemented the previous five focus group discussions and promoted creativity in finding solutions to build an open, efficient, and independent judiciary in Ukraine. Conference participants identified 24 topics, such as judicial independence, public



Judges and court staff discussing strategic planning issues at focus groups in Odesa on February 3, 2012 (at the top) and Kharkiv on February 10, 2012 (at the bottom).

outreach, and professional development and eight action plans related to strategic planning.

As a result of these activities, the SJA's Strategic Planning Subgroup, jointly with the FAIR project, developed a draft strategic plan for the judiciary that was completed on March 31 for the judiciary's comment and review. The plan focuses on seven strategic issues: independence and effective relations with other branches of government, proper funding and efficient use of resources, integrity in the delivery of justice, fair and equal access to justice, innovative use of technology, professionalism and excellence in service, and public trust and confidence.

From May to September 2012, in cooperation with the SJA, COJ and NSJ, FAIR conducted 12 regional focus group discussions on the draft plan (instead of the 10 planned) in Odesa (May 18), Lviv (May 30), Lutsk (June 1), Kirovograd (June 8), Ivano-Frankivsk (July 13), Khmelnytskyiy (July 18), Chernivtsi (July 20), Kyiv (June 27, 2012), Chernihiv (August 31), Sevastopol (September 07), Kharkiv (September 14), and Donetsk (September 21). FAIR supported the participation of the delegation from Maryland, including Judges Richard Bennett, Catherine Curran O'Malley, and Mary Ellen Barbera, and Circuit Court Administrator Pamela Harris, in a focus group discussion during its visit to Odesa.

FAIR presented a draft strategic plan at the meeting of the Working Group on Innovations at the SJA of Ukraine on June 27, 2012 and at the SJA's International Conference on Court Innovations on September 10, 2012, which was attended by the representatives of the Supreme Court, Constitutional Court, COJ, SJA, NSJ, HCJ, HQC, HCCC, High Administrative Court, High Economic Court, local and appellate courts, MOJ, Presidential Administration, Verkhovna Rada, civil society organizations, and representatives of foreign judiciaries and international experts active in court administration.

On September 12, 2012, to continue professional discussion on the draft strategic plan, the SJA posted the plan on the judiciary of Ukraine's web portal at <http://www.court.gov.ua/18787/>

At the 12 regional focus group discussions and the International Conference on Court Innovations, participants provided their feedback on the draft plan and identified key recommendations to improve the draft, such as eliminating duplication of information, making the plan more practical and realistic, including legislation to be approved for implementation of the plan over a three-year period, directing the plan to achieve specific goals, including a detailed action plan into the draft, and providing for adequate financing for its implementation.

FAIR summarized all comments and recommendations and updated the draft strategic plan. FAIR plans to present the updated plan at the meeting of the Working Group on Innovations at the SJA preliminarily scheduled for November 2012 and work with the head of the SJA to present the updated plan to the COJ before the Congress of Judges.

Building on initiatives implemented by UROL, FAIR continues close collaboration with the Library of Congress's Open World Program (OWP), which promotes cooperation between the



Inna Bilous, Head of Public Outreach Department of the Kharkiv Circuit Administrative Court during the national Open Space Conference in Kyiv on March 19, 2012.

United States and Ukraine by developing a network of leaders in the region who have gained significant, firsthand exposure to America's democratic, accountable government and its free-market system. FAIR and OWP have successfully cooperated on conducting conferences in Ukraine, and FAIR continues to nominate judges and court administrators to participate in OWP programs.

In September 2012, OWP conducted professional exchanges on the rule of law and judicial independence for Ukrainian court administrators, who have an expanded role in court according to the new Law on the Judiciary and Status of Judges. The Ukrainian participants were competitively selected with FAIR support and represented key FAIR partners. As this program directly supports FAIR objectives, FAIR Operations Manager Iryna Storozhuk participated and contributed as an observer in the Open World visit of court administrators to Washington, D.C., and Los Angeles, California on September 13-22, 2012.

The Ukrainian delegation discussed federal court systems in the United States and Ukraine with U.S. federal judges, U.S. Marshals, U.S. Attorneys, and public defenders, and had the opportunity to observe live court proceedings and meet and converse with federal judges, clerks, and court administrators, who educated the delegation on the various types of legal issues and procedures within the United States. The judges explained how business is conducted in federal courts, bankruptcy courts, and trial courts of general jurisdiction.

FAIR's participation in the OWP aimed at providing support to the Ukrainian delegation and U.S. host organizations to ensure proper implementation of the OWP in the United States, explore possible partnerships between U.S. and Ukrainian counterpart organizations, apply of best practices and lessons learned in Ukraine, enable greater exposure to FAIR's work, identify new participants for project activities, support the Ukrainian delegation in drafting and refining individual and/or group action plans to advance the strategic planning for the judiciary of Ukraine, and gain exposure to more effective court administration, case management, strategic planning, and judicial training. FAIR plans to work in Ukrainian courts and include in future implementation such activities as SHADES (Stopping Hate and Delinquency by Empowering Students), Hate Crime Teen Court, fully automated court room, and magistrate judge position principles, as this new type of judicial position has been created in Ukraine's new Criminal Procedure Code. FAIR will work with September 2012 OWP delegates to collect lessons learned and best practices, to reflect them in a draft strategic plan for the judiciary.



SJA Head Ruslan Kyryliuk giving welcoming remarks to Conference participants, Hyatt Regency Ballroom Hall, Kyiv, September 10, 2012.

This reporting year, FAIR worked jointly with the SJA to help design an appropriate organizational structure and policies within the SJA for the support of IT, procurement, capital improvement, human resources, statistical collections, and analysis activities within the courts. To give the SJA an opportunity to study best international practices in court administration, FAIR supported the participation of a Ukrainian delegation of 13 SJA, court, and civil society representatives at a conference organized by the International Association for Court Administration (IACA) in the Hague. This conference brought together senior-level judicial system leaders, judges, academic specialists, justice system experts, and judicial training personnel from the European Union, Council of Europe, United States, Canada, Australia, Italy, the Netherlands, Norway, Turkey, Egypt, Ukraine, and other countries to discuss approaches to improving judicial self-governance, court administration, and case management.

At the conference, SJA Head Ruslan Kyrlyuk gave a presentation on the steps that the SJA had taken to ensure sustainable development of Ukraine's judiciary, and Supreme Court Justice Vasyl Humeniuk delivered a presentation on the issues which the bodies of judicial self-governance face in Ukraine. At the end of his presentation, Justice Humeniuk said, "Although we all come from different justice systems, we, as judges, share the same goals and the same problems. And while we face a lot of criticism, we have to unite our efforts and do our best to ensure judicial efficiency independence, and the bodies of judicial self-governance in Ukraine have to build up their potential and play a significant role in these areas." Both presentations were received positively, with lots of audience questions and comments, and became true highlights of the conference.

At the end of the conference, FAIR asked the Ukrainian participants to provide their recommendations for how to build on what they learned from the presentations. Recommendations included the following:

1. Study in more detail the experiences of the UAE and Turkey in establishing unified automated systems to provide quality court services to the public and explore the possibility of applying some of these results in Ukraine;
2. Conduct a comparative analysis of the roles and functions of judicial self-government bodies in Ukraine and European countries and determine similarities and differences;
3. Organize exchange of experiences between the judicial self-government bodies of Ukraine and those other countries, with an emphasis on ways to secure judicial independence;
4. Work on implementing elements of the international framework for court excellence in Ukraine;
5. Study international experience in organizing training courses for court administrators, especially the courses developed by the University of Denver;
6. Establish direct connections between the SJA and similar organizations from other countries to allow for sharing of knowledge and experience;
7. Ensure the membership of Ukrainian judiciary bodies in international organizations like the IACA; and
8. Analyze the internal control mechanisms being implemented in European judiciaries, and study the possibility of their application in Ukraine.

The Ukrainian delegation's participation at the IACA Conference led to the SJA's conducting the first-ever international judicial administration conference on Court Innovations in Ukraine on September 10-11, 2012. FAIR was one of the event's co-organizers, and provided extensive administrative support, supported the participation of five international experts as guest speakers at the Conference, ensured simultaneous interpreting, and provided accommodation to all Ukrainian participants at the event. FAIR staff also participated in the work of the conference as speakers and moderators. FAIR worked to ensure that the conference would be used as a platform to reinforce the project's key messages to Ukraine's judiciary and that it covered all the areas of FAIR's work,

including strategic planning, court budgeting, court automation, human resource management, professional development, and communications.

The Conference brought together more than 200 participants, including more than 40 guests from the USA, the Netherlands, Denmark, the UK, Australia, Canada, Bulgaria, Egypt, Hungary, Moldova, Lithuania, and Georgia. In his opening remarks, SJA Head Ruslan Kyrlyiuk said, “I believe that this Conference will give us the possibility to share our experience and innovative approaches to the improvement of the judiciary, as well as to gain valuable knowledge on how to implement innovations in the judiciary.”

To support the SJA in its capacity building efforts, in September 2012, FAIR conducted an extensive analysis of the SJA’s structure, using the services of two international short-term experts. The report and its recommendations are due by mid-October 2012. Based on the preliminary findings, however, FAIR proposes to work on designing functional descriptions and staff qualification requirements for several new SJA departments, including (but not limited to) a department for long-term strategic planning.

To help ensure that courts have access to useful management tools, FAIR employed a local expert to draft a manual on human resource management (HRM) for court chiefs of staff and chief judges. The manual was completed in the previous work planning period, but, FAIR determined that the content of the manual was too complex for a broad audience and that simplification and professional editing was required. This, combined with summer vacation season and lengthy tender procedures, led to a delay in the manual’s release. Currently, FAIR has contracted a publishing house to conduct the editing and printing and expects the manual to be ready by November 15, 2012.

FAIR also experienced a delay in selecting a partner to conduct three regional training sessions for court staff in HRM best practices. Through a competitive process, FAIR selected the Ukrainian Association for Court Advancement (UACA) to conduct these trainings, but due to the vacation season, FAIR decided to postpone the training to ensure greater participation of court staff. FAIR expects this training to be conducted by November 15, 2012.

Finally, over the previous period, FAIR, jointly with the SJA and the State Enterprise “Information Court Systems,” finished developing a draft automation strategy for Ukraine’s judiciary. The strategy describes the current status of automation of the judiciary, identifies pending problems, and offers solutions in the form of specific project-by-project steps, under the umbrella of the overall goal of automating the majority of the aspects of work of Ukrainian courts. This document is currently pending for approval by the SJA’s Innovations Working Group.

DEVIATIONS IN IMPLEMENTATION OF THE WORK PLAN: At the international conference on strategic planning for the judiciary mentioned above, Supreme Court Justice Yaroslav Romaniuk went on to commit to the development of a strategic plan for the Ukrainian judiciary by ordering the SJA to draft a plan for the COJ to adopt at its congress in December 2012. FAIR planned to have a draft strategic plan for the judiciary to be approved by the COJ in late 2012. However, in the monthly meeting on September 21, 2012, the COJ approved that the Congress of Judges of Ukraine will be conducted on February 22, 2013, where, as expected, the Strategic Plan for the Judiciary will be adopted. Before this congress, FAIR will promote approval of the plan by the SJA and COJ before developing action plans.

After a year of supporting this activity, FAIR believes it is time for the SJA to take ownership of this process. The SJA still does not have a person or department responsible for strategic planning. FAIR Court Administration and Budgeting Expert Markus Zimmer, in his analysis of the SJA’s structure and recommendations on how to enhance the SJA’s current structure and processes,

advised the SJA to create a strategic and long-term planning department to oversee implementation of the strategic plan and develop action plans, because no efficient and realistic Strategic Plan for the Judiciary is not possible without an action plan. FAIR will share the results of Mr. Zimmer's report with the SJA and COJ to allow the SJA to establish such a department.

As mentioned above, FAIR experienced delays with the release of the *Human Resource Management Manual* and the conducting of three regional training sessions for court staff in HRM best practices, due to the summer vacation season and lengthy tender procedures. However, FAIR expects the items to be completed by November 15, 2012.

EXPECTED RESULT 4.1: CIVIL SOCIETY AND THE PUBLIC HAVE EFFECTIVE MEANS TO ENGAGE IN DIALOGUE WITH DECISION MAKERS REGARDING JUDICIAL REFORM

CURRENT STATUS OF AFFAIRS AND KEY ACHIEVEMENTS:

During the reporting period, Ukrainian policymakers and lawmakers showed significant progress in adopting pending legislation. Unfortunately, this progress seems mostly to be due to the political situation and forthcoming parliamentary elections (October 2012), not because of strengthened capacity of civil society organizations (CSOs). Although the level of civil society engagement in dialogue with decision makers has increased, the lack of consistent motivation in advocacy for pending legislation identified earlier and the weak capacity of CSOs remain in place. Judicial reform progress over the reporting period is based on adoption of several significant laws, such as the Law on the Bar and Criminal Procedure Code, and on the law establishing the Constitutional Assembly.

Milestone Progress ER 4.1

- Conducted meetings with potential CSO grantees regarding research on pending legislation.
- Prepared RFA on pending legislation.

Throughout the reporting period, to strengthen working contacts with CSOs and share relevant information with them, FAIR participated in the following specialized fairs, forums, and meetings that were supported, among others, by the MOJ and the U.S. Embassy in Ukraine:

- In December 2011, together with the USAID Legal Empowerment Project (LEP) and the USAID Building Ukrainian Independence and a Lasting Democracy (BUILD) project, FAIR participated in the "Law Week," providing more than 1,500 public awareness kits. During the event, FAIR established new working contacts with the Ministry of Justice of Ukraine and agreed on further cooperation in the field of legal education and legal aid.
- In January, February, and March 2012, FAIR representatives participated in the Parliamentary Technical Assistance Organization's coordination meetings, organized by the USAID Parliamentary Development Project for Ukraine (PDP-II) Legislative Policy Development Program. During the meetings, PDP II and the Secretariat of the Cabinet of Ministers presented a new version of the "Civil Society and Government" website developed over the past year. As a result of the meetings, FAIR obtained access to a modern tool of cooperation with CSOs and a database of public legal



Disseminating public awareness materials during the "Modern Libraries: Developing Communities" Fair on May, 21, 2012

initiatives. The website will allow FAIR to access more CSOs for information dissemination and help identify CSOs to support with technical assistance and capacity building.

- In May 2012, FAIR participated in the “Modern Libraries: Developing Communities” Fair, co-organized by Bibliomist, the Ministry of Culture of Ukraine, National Parliamentary Library of Ukraine (NPLU), Ukrainian Library Association (ULA), GURT Resource Center, USAID PDP II, and Public Affairs Section of the U.S. Embassy. During the event, FAIR disseminated public awareness kits containing a “Getting Acquainted with the Court” video, brochures, leaflets, and posters on the judiciary. CSOs, libraries, scientific communities, and experts attended the fair.
- In June 2012, FAIR participated in the LGBT Information Fair organized by the U.S. Embassy in Ukraine. The goal of the event was to help connect embassies and organizations which provide financial, technical, or other assistance to LGBT NGOs that may be eligible to receive such assistance.
- In June 2012, FAIR representatives participated in the meeting of Coordinating Council of Civil Society Development, which was established in January 2012 to improve state and civil society partnerships. Maryna Stavnichuk, Advisor to the President of Ukraine and Head of Presidential Administration Main Office for Constitutional and Legal Modernization Affairs, led the meeting. More than 60 MPs and Presidential Administration staff, scientists, CSOs representatives (including FAIR grantees), experts and Rule of Law implementers’ representatives participated in the meeting.

A success story based on FAIR participation in specialized public events and inter-project cooperation among USAID projects in disseminating public awareness materials is posted on FAIR’s website at the following link: http://www.fair.org.ua/index.php/index/news_single/93

Finally, FAIR representatives, including the Legal and Civic Advocacy Specialist, participated in the Library of Congress Open World program official visit to the United States as part of a “Rule of Law” delegation and established new contacts both with Ukrainian CSO participants of the delegation and U.S. experts. These new contacts, especially with the Union of Advocates of Ukraine and territorial bar disciplinary commissions, will help FAIR strengthen cooperation between CSOs and the bar in advocating for and monitoring pending judicial reform legislation.

DEVIATIONS IN IMPLEMENTATION OF THE WORK PLAN: In accordance with the contract, FAIR is supposed to strengthen CSOs’ capacities to advocate for pending judicial reform legislation by providing appropriate grants. After the Grants Manual was approved in 2012, FAIR prepared the RFA on “Civil society involvement on proposed and pending judicial reform legislation to foster public input in the lawmaking process,” but as a significant part of draft legislation was adopted, it was agreed to redraft the RFA. The RFA’s release was postponed because of the forthcoming parliamentary elections, because this grant activity’s main goal is to provide CSOs and the public with effective means to engage in dialogue with decision makers regarding judicial reform. Considering that the structure of the Parliament and decision makers will change after the elections, it was agreed to begin the activities within this grant with a new Parliament (November 2012 and ongoing), to achieve more results and increase cost efficiency. Such activities will include a specialized report on pending judicial reform legislation development and roundtable discussions. The RFA will be released in October 2012.

EXPECTED RESULT 4.2: THE UKRAINIAN PUBLIC IS ENGAGED IN THE JUDICIAL REFORM PROCESS THROUGH CIVIC EDUCATION AND ADVOCACY ACTIVITIES

CURRENT STATUS OF AFFAIRS AND KEY ACHIEVEMENTS: This reporting period, to strengthen civil society organizations’ capacity to advocate for the passage or amendment of judicial reform legislation, FAIR released three RFAs on public awareness campaigns:

- An RFA on public awareness campaign on the benefits, achievements, and novelties of the new Criminal Procedure Code;
- An RFA on public awareness campaign on citizens' rights, responsibilities, and benefits of judicial reform;
- An RFA on civil society involvement in constitutional reform process.

Milestone Progress ER 4.2

- Initiated development of two new civic education materials.
- Drafted and submitted to COJ its Communications Strategy.
- Finalized and submitted Public Information Officer job instructions to the COJ.
- Finalized and submitted Guidelines on Courts and Media Relations to the COJ.

The OPDAT representative and the Council of Europe regional project officer participated in the grant evaluation committee (GEC) meeting, together with FAIR staff. The GEC was supposed to select the grantee for public awareness campaign on the benefits, achievements, and new features of the new Criminal Procedure Code. But none of the applications met the RFA requirements, and accordingly, no grantee was selected to perform the new CPC public awareness campaign. FAIR is planning to provide pre-proposal briefing/application assistance and reissue an updated RFA on CPC public awareness campaign after that.

The two other grant competitions seem to be more substantive and solid, based on preliminary assessment of the applications. Hopefully, FAIR's GEC will select the grantees for civil society involvement in constitutional reform process and public awareness campaign on citizens' rights and responsibilities and the benefits of judicial reform competitions, and FAIR will sign the appropriate contracts at the beginning of the next workplan period (October 2012 to March 2013).

In cooperation with the COJ, FAIR developed its draft communications strategy and submitted the following deliverables to the COJ:

- Draft Communications Strategy for the COJ;
- Draft Model Communications Strategy for Courts;
- Public Information Officer job instructions; and
- Guidelines on Courts and Media Relations.

As a part of the judiciary communications activities, FAIR supported the "Communications Strategy of the Judiciary" series of seminars, organized by the Center for Judicial Studies (CJS), in cooperation with specialized councils of judges and COJ.

Both the Manual and the Curriculum on Public Relations in Courts (the updated name) were significantly improved by FAIR legal staff and submitted to the COJ, NSJ, and CJS for comments and updates. After that, they will be finalized by the new expert from Karazin National University.

In addition, on July 17, 2012, FAIR signed the protocol of cooperation with the HCCC and updated the HCCC Communications Strategy developed earlier.

FAIR also performed a range of activities foreseen by the communications strategy of the Ivano-Frankivsk Oblast Court of Appeals, developed by UROL staff, together with Ivano-Frankivsk Oblast Court of Appeals Public Information Officer, including the following:

- The roundtable on the "Development and Implementation of the Model Communications Strategy for Courts" in Ivano-Frankivsk in January 2012;

- The launch of the call center of Ivano-Frankivsk Oblast Court of Appeals. News coverage of the launch can be found at <http://www.youtube.com/watch?v=6PVdaw8QZK0&feature=plcp>.

Following the recommendations of the roundtable on “Development and Implementation of the Model Communications Strategy for Courts” in Ivano-Frankivsk, FAIR decided to support a Ukrainian judiciary initiative to develop a brochure on good practices in court communications. FAIR received COJ support for this initiative, disseminated the relevant applications to the courts of appeals in all regions (oblasts) of Ukraine, collected the information and engaged an expert to draft the brochure. The brochure is being finalized and will be published together with all other FAIR curricula, covered by E.R.3.1 during the next work plan period.

FAIR also updated and produced 2,000 copies of the video “Getting Acquainted with the Court” to reflect new provisions of the Law on the Judiciary and Status of Judges, which became part of the FAIR public awareness kits.

Finally, FAIR supported inter-project cooperation within USAID projects network. In particular, FAIR supported USAID LEP’s quarterly meetings, providing presentations on the Citizen Report Cards (CRC) methodology and CSOs engagement in judicial reform process. One of the presentations can be found at <http://pravovakrayina.org.ua/2011/12/%D1%83-%D0%B4%D0%BE%D0%BD%D0%B5%D1%86%D1%8C%D0%BA%D1%83-%D0%BE%D0%B1%D0%B3%D0%BE%D0%B2%D0%BE%D1%80%D0%B8%D0%BB%D0%B8-%D0%BC%D0%BE%D0%B6%D0%BB%D0%B8%D0%B2%D0%BE%D1%81%D1%82%D1%96-%D0%BF%D1%96%D0%B4/#more-1649>. FAIR also successfully prepared a site visit to the Donetsk Oblast Court of Appeals and a meeting with Chief Judge Valentyna Lisova for participants in the USAID LEP Quarterly Meeting.

DEVIATIONS IN IMPLEMENTATION OF THE WORK PLAN: This reporting period, FAIR conducted several meetings with CSOs such as the Agency for Private Initiative Development and the Center for Political and Legal Reforms, to assess their capabilities to develop and disseminate public awareness materials and communicate with media on judicial reform issues. The assessment showed that some CSOs have the capacity to develop and/or update public awareness materials for the judiciary, and other CSOs have the capacity to disseminate public awareness materials and develop public awareness campaigns on rights, responsibilities, and benefits of judicial and constitutional reforms. FAIR decided to separate the responsibilities and release an RFP to develop public awareness materials development and an RFA on public awareness campaign on rights and responsibilities and the benefits of judicial and constitutional reforms development and public awareness materials dissemination.

The RFP on the development and update of the public awareness materials for the judiciary (including the development of the new brochure on the new Criminal Procedure Code) was released. Even though the RFP announcement was widely distributed, the only application received was from the Center for Legal and Political Consultations (CPLC). After a round of negotiations conducted between FAIR and CPLC, the contract was not signed, as the proposed budget did not meet FAIR’s requirements. .

The OPDAT representatives proposed to develop the brochure on the new CPC through available resources of the U.S. Department of Justice. FAIR is waiting for the go-ahead from OPDAT and exploring possibilities to update these brochures and other public awareness materials through in-house legal expertise resources or through identifying alternative external legal experts.

EXPECTED RESULT 4.3: CIVIL SOCIETY ORGANIZATIONS HAVE MEANS AND OPPORTUNITIES TO EFFECTIVELY MONITOR THE IMPLEMENTATION OF JUDICIAL SECTOR REFORMS AND PROVIDE OVERSIGHT TO JUDICIAL OPERATIONS

CURRENT STATUS OF AFFAIRS AND KEY

ACHIEVEMENTS: This reporting period, FAIR continued to support CRC activities begun under UROL. The purpose of the CRC grant program was to conduct a survey aimed at measuring citizen satisfaction with court performance using the citizen report cards methodology, helping courts to improve court services and increase public trust, and promote external court performance evaluation (CPE) as a part of national system (linked to the ER 3.2). The surveys

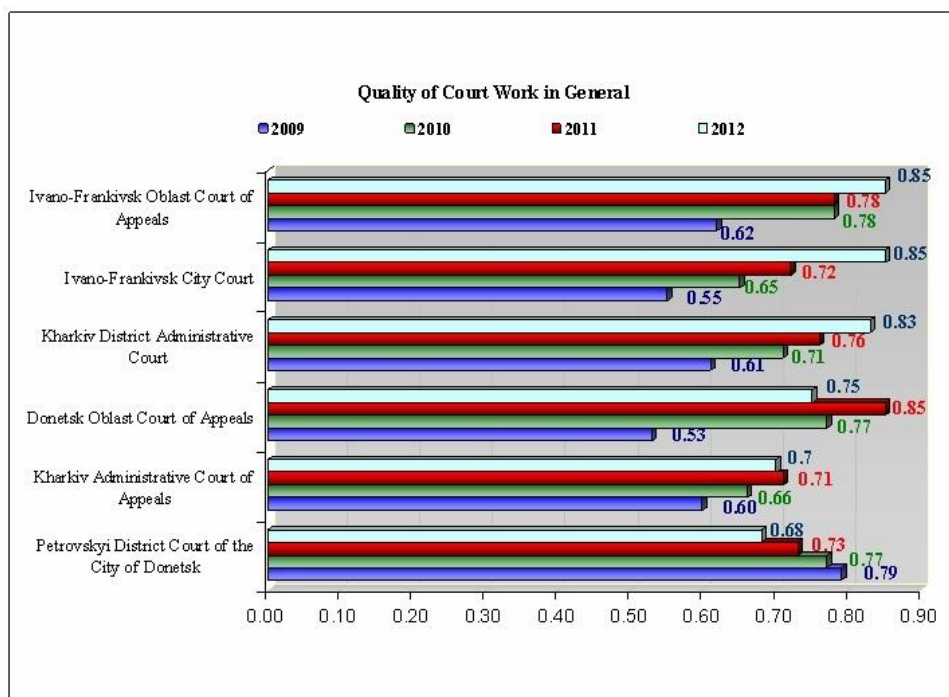
were implemented by eight competitively selected CSOs in nine former UROL-supported courts and 25 new pilot courts in 13 regions of Ukraine. Thirteen out of the 34 CRC courts conducted both internal and external CPE in eight regions (linked to the ER 3.2). It is important to highlight the fact that former Chief Judge Yuriy Medvedenko of the Kirovograd Oblast Court of Appeals and Chief Judge

Oleksiy Chernovsky of the Chernivtsi Oblast Court of Appeals, on their own initiative, decided to participate in the CRC program. As a part of the CRC grant program, FAIR conducted a two-day workshop for 21 members of 8 CSOs, 42 judges, and the staff of 34 CRC courts. The former UROL grantees and partner courts exchanged experience and shared lessons learned with the new CRC courts and CSOs. The FAIR team

also provided guidance on grant project implementation to CSO partners (grantees). Under CRC activities, grantees conducted focus groups at 25 new pilot CRC courts to review the CRC questionnaire, identify specifics of each court, and additional questions that each court would like to ask court users. FAIR representatives attended such focus-group discussions at the Kirovohrad Oblast Court of Appeals and provided guidance and technical expertise to the new grantee, TORO Creative Union CSO. In June and July 2012, interviewers who received training by partner CSOs collected data from 4222 court users in 34 courts of Ukraine. In July 2012, FAIR provided data entry training for 11 CSO partner representatives to introduce data entry and processing methodology and provide data entry software for partner CSOs. In August and September 2012, grantees conducted the focus groups with CRC courts to discuss preliminary findings and work out recommendations on court service improvements. Additionally, CRC partner CSOs prepared preliminary draft analytical reports for FAIR review. Grantees will present the final CRC results to the partner courts at the regional roundtables in November and December 2012.

Milestone Progress ER 4.3

- CRC surveys extended to 8 new regions and 25 new courts.
- CRC surveys conducted in 34 courts in 13 regions of Ukraine.
- Selected (competitively) CSO partner to administer the pilot court administration certificate program.



Users' evaluation of court work in general for 6 courts participated in all 4 rounds of CRC survey in 2009-2012 (in ratio of maximum score of 5).

As a part of the CRC program, FAIR engaged short-term expert Maryna Ogay who provided civil society and sociological expertise to the courts and civil society organizations that implemented CRCs. Ms. Ogay supported the implementation of the CRC grant program by conducting CRC methodology and data entry trainings, providing technical assistance and expertise to partner CSOs in analyzing data, preparing analytical reports and presenting CRC results.

FAIR was invited by the European Group for Public Administration (EPGA) Permanent Study Group on Justice and Court Administration to present best practices and lessons learned in external court performance evaluation using CRCs at the EPGA Annual Conference in Bergen, Norway in September 2012. FAIR's CRC presentation received attention from international academicians who attended the conference.

In addition, to promote successful CRC activities, FAIR competitively selected a vendor to produce a CRC video.

During this period, FAIR supported the design and implementation of the innovative pilot court administration certificate program initiated by Kharkiv Circuit Administrative Court. The adoption of the Law on the Judiciary and Status of Judges on July 7, 2010 provided chiefs of staff and deputy chiefs of staff (court administrators) with new and broad management authorities in courts, including responsibility for the organization and maintenance of court operations and case management systems. Before this Law was adopted, most of these powers were vested in chief judges. However, Ukrainian court administrators faced challenges like the lack of a clear set of qualification requirements for court administrators and limited professional development and training opportunities. In efforts to address this issue, FAIR supported five working meetings on design and implementation of the court administration certificate program in Kharkiv. The program is aimed at increasing the knowledge, skills, and abilities of 40 competitively selected Ukrainian court administrators to manage courts effectively. As result of the working meetings, the representatives of the courts, universities, and CSOs developed a concept paper, court administrator competencies, and a work plan for the pilot court administration certificate program. In addition, Michigan State University has expressed interest in supporting the design, implementation, and evaluation of the pilot court administration certificate program. In August 2012, FAIR competitively selected partner CSO the Institute of Applied Humanitarian Research to administer the court administration certification program.

In addition to efforts to develop a court administration certificate program, FAIR engaged a local short-term expert Iryna Soldatenko to coordinate activities of the key partners to ensure successful implementation of the court administration certificate program.

Though the pilot program was initiated in Kharkiv and originally aimed at Kharkiv region court administrators, FAIR moved it to Kyiv and expanded the target group (court administrators) to the national level due to the issue described in the following section. Currently, FAIR is in the process



Maureen E. Conner, Ph.D., Associate Professor Director, Judicial Administration Program Executive Director, Michigan State University (MSU) is giving video presentation on the MSU Judicial Administration Program at the SJA 10th Anniversary conference in Kyiv on September 11, 2012.

of receiving a commitment on support of the court administration certificate program implementation from the SJA.

Also during this report period, FAIR supported the Ukrainian delegation within the USAID Community Connections Program on Improving Court Administration and Management through the Exchange of Professional Experience between the Ukrainian Court Staff and their U.S. Counterparts. This program is the result of a proposal submitted by FAIR in December 2011 and is linked to the activity to support a court administration certificate program. The participants of the exchange program, court administrators, civil society advocates, and academics, were competitively selected with FAIR support. In July 2012, FAIR's Civil Society Specialist and SAF Director Larisa Sinitsyna accompanied the Community Connections Program group to Reno, Nevada, and supported both the Ukrainian delegation and U.S. host organizations to ensure proper implementation in the U.S., explore possible partnerships between U.S. and Ukrainian counterpart organizations, and apply the best practices and lessons learned in Ukraine. The support included the following: preparation of background information on the Ukrainian judiciary and court administration, management issues for U.S. counterparts to support the participants in drafting and refining the action plans and to assist in the facilitation of professional sessions with U.S. counterparts etc. As a result of the visit, participants developed action plans to use this new knowledge and experience to improve court administration and management in Ukraine. They presented these action plans at the working meeting on development of the pilot court administration program supported by FAIR in August 2012 in Kharkiv. Representatives of the USAID office, the USAID Community Connection program, courts, and universities attended the presentations. These action plans will contribute to the design and implementation of the above mentioned court administration certificate program. Additionally, the delegates' action plans included activities to establish sustainable communications between courts and society, with the purpose of increasing public trust and improving court services. This includes such steps as creating public information officer position in courts, establishing information centers with materials for court users, cooperating with CSOs, improving court websites, making court facilities accessible for people with special needs, and providing expertise to develop a national system for court performance evaluation.

Finally, FAIR activities in this reporting period allowed CSOs to contribute improving the judicial candidates' anonymous test. In June 2012, representatives of the CIPAEN and Center of Political Studies NGOs acted as monitors at the judicial candidates' anonymous test and produced a draft report on the monitoring results along with the recommendations to improve the test administration procedures. FAIR is currently finalizing the draft report. FAIR will present the results on the monitoring and the recommendations to the HQC to make improvements on the judicial candidates testing and the corresponding changes into the regulations on judicial selection.

DEVIATIONS IN IMPLEMENTATION OF THE WORK PLAN: FAIR had to postpone all grant activities until March 2012, as the project was awaiting approval of the grants manual.

In addition, FAIR faced the following issue during the design and implementation of the pilot court administration program. As mentioned above, the newly adopted Law on the Judiciary and Status of Judges grants much greater authority to court administrators throughout Ukraine. However, court administrators have limited training opportunities aimed at professional development. In December 2011, to increase professional level of court administrators, the Kharkiv Circuit Court, in partnership with the Kharkiv V. N. Karazin National University, Yaroslav Mudry Law Academy of Ukraine National University, the Kharkiv Continuous Education Academy, and the Ukrainian Association for Court Advancement (UACA) initiated the development of the pilot court administration certificate program for 40 court administrators from the Kharkiv region. FAIR supported this initiative. The Kharkiv Court of Appeals unexpectedly interfered, asking to shift the whole pilot program to its premises and using its judges as the

faculty. As Kharkiv Court of Appeals does not have the capacity to conduct this program and the two referenced courts could not agree on the final place and list of partners for implementing the pilot program, FAIR shifted the program to Kyiv and expanded the pool of participants to the national level. FAIR is in the process of receiving a commitment from the SJA and NSJ to launch and implement the pilot court administration program beginning November 2012 in Ukraine.

PERFORMANCE MANAGEMENT AND EVALUATION

The results framework presented in Annex A, “Performance Management and Evaluation,” graphically represents our strategy to achieve the program goal, “Support legislative, regulatory and institutional reform of judicial institutions in order to build a foundation for a more accountable and independent judiciary” and provides a foundation for planning and performance monitoring, allowing each activity to link to a specific result and each result to be measured by unique indicators. FAIR proposed activities aim to achieve 11 expected results (ERs), which leads to higher level changes in the judicial system, as represented by the four project objectives.

FAIR has 35 life-of-project indicators designed to capture and communicate major project impacts, track implementation progress against targets, support project management in making informed decisions, and contribute to USAID’s own performance management and reporting needs. Annex A contains the list of FAIR indicators, grouped by project ERs, with target versus actual data for Program Year 1 (FY2012), target for Program Year 2 (FY2013), and the life of the project target for FAIR base period. Thirty-four indicators have targets set for Program Year 1.¹

In FY2012, in an effort to achieve the overall project objective, FAIR supported 13 governmental judicial institutions and 9 non-governmental legal associations. FAIR’s FY2012 target for the indicator “Number of legal institutions and associations supported by USG” was 24, while the actual output is 22. Initially, FAIR strived to involve more non-governmental legal associations in activities regarding judicial reform, constitutional reform, and public awareness campaigns regarding the judiciary. But due to delays in project activities related to involving Civil Society Organizations (CSO), as explained in this report, under ER1.2, ER4.1, and ER4.2, FAIR did not involve the expected number of CSOs.

FAIR doubled its target on the indicator “Number of laws, regulations, and procedures designed to enhance judicial independence supported with USG assistance” in FY2012 under its Objective 1: “The legislative and regulatory framework for judicial reform complies with European and international norms and supports judicial accountability and independence.” FAIR-promoted changes in Ukrainian legislation came into effect with adoption of four laws that strengthened the judicial independence by giving both the President and the Verkhovna Rada discretionary power over judicial appointments, increase the role of the Supreme Court of Ukraine (as recommended by the Venice Commission), and made other important changes. While the actual number of laws adopted is double FAIR’s target, the qualitative content of these laws is less than FAIR’s target: the actual status of the indicator “Number of revised provisions enacted that reflect Venice Commission recommendations” is 4, compared with the target of 22, and the “Percentage of Venice Commission recommendations adopted” is 15 percent, compared with the target of 80 percent. FAIR updated its FY2013 targets for the ER 1.1 based on the actual FY2012 achievement.

FAIR did not achieve its targets set under ER1.2 due to a factor beyond the project’s control: the Constitutional Assembly started its activity later than expected, in summer 2012. FAIR revised its FY2013 target to meet the cumulative project and target for base period.

¹ The indicator “Number of court performance standards adopted” has target set for program year two only.

FAIR made important, tangible, measurable changes under Objective 2: “The accountability and transparency of key judicial institutions and operations are strengthened.” FAIR supported the development of and importing module for the HQC website, enabling automatic posting of judicial discipline decisions and contributing to the indicator “Number of new properties and functions surrounding judicial selection and discipline introduced to HQC website with project support.” As for judicial selection, FAIR supported the development and promoted the adoption of procedures to draft and validate case studies for judicial candidate exam, contributing to the indicator “Number of merit-based criteria or procedures for justice sector personnel selection adopted with USG assistance” (actual data is 2 against FY2012 target of 10). This FY2012 target for this indicator was not met due to the delay in drafting the list of judicial competencies because HQC members were unable to reach consensus on this subject.

FAIR supported work to improve two case study procedures, the procedure for administration of the judicial anonymous test, and the procedure on judicial vacancy application, contributing to the indicator “Number of procedures within the judicial appointment process improved with project support” meeting the FY2012 target.

FAIR achieved significant results in increasing the transparency of judicial discipline process. In October 2011, only 2 percent of judicial misconduct complaints were submitted to the HQC on the standardized form. Considering the large number of judicial misconduct complaints, FAIR set the target for the indicator “Per cent of judicial misconduct complaints submitted to the HQC using the standardized form” at 3. From January 1 to September 30, 2012, the HQC received 12,053 judicial misconduct complaints, 1,070 of them (or 8.9 percent), on the standardized form, almost triple FAIR’s target. There are two reasons for this success – the improved functionality on HQC’s website and the fact that the judicial misconduct complaint form has been posted on the High Council of Justice’s (HCJ) website.

FAIR met its FY2012 target for “Percent of judicial discipline decisions posted on HQC website.” The vast majority of the decisions posted (81 percent), however, were for the 2011-2012 calendar years. The HQC has posted all of the decisions reached in the 2012 calendar year data on its website.

FAIR supported the development of new draft of the Code of Judicial Ethics. 160 judges from 21 regions provided their feedback to the development of this draft through FAIR-supported roundtable discussions, exceeding FAIR’s target for the indicator “Number of judges providing feedback to revisions of judicial self-governance mechanisms.” The draft is still under discussion, and FAIR expects it to be approved in 2013.

Under Objective 3: “The professionalism and effectiveness of the Ukrainian judiciary are strengthened” FAIR met or exceeded 9 of its 11 targets. Citizen Report Card (CRC) surveys in 34 courts, showed that case management had improved in 22 courts, according to court user responses. This contributes to the indicator “Number of USG-assisted courts with improved case management” and exceeds FAIR’s FY2012 target of 20.

FAIR significantly exceeded its FY2012 target (300) on the “Number of judges and judicial personnel trained with USG assistance,” actually training 875 of them. This increase is mostly due to collaboration and resource-sharing with other international donors (U.S. Department of Justice, Council of Europe, and European Union) and Ukrainian partners. Another reason for this increase is the increased need of Ukrainian justice sector personnel for judicial training related to the application of the new Criminal Procedural Code, electoral law during 2012 elections, court performance evaluation, and court budgeting. This number includes 664 judges, and contributes to the indicator “Number of judges trained with USG assistance,” tripling FAIR’s FY2012 target of 200.

In addition, FAIR, in cooperation with the National School of Judges, conducted three trainings of trainers on the new Criminal Code of Ukraine and on adult-learning techniques, at which 59 judges were trained, contributing to the indicator “Number of TOT trainers created.” Thirty judge-trainers conducted 23 training programs on this topic for more than 1,100 judges in 17 regions of Ukraine.

FAIR supported the development of draft of the national Court Performance Measurement Framework, which is based on four measurement areas or standards, contains 24 court performance criteria, and more than 70 potential indicators. FAIR expects this framework to be adopted in 2013. Meanwhile, FAIR engaged 13 courts in pilot-testing the draft framework, contributing to the indicator “Number of courts involved in piloting court performance standards.” These 13 courts are also part of FAIR’s 2012 round of the Citizen Report Card (CRC) survey, in which a total of 34 courts participated. The average CRC score for 34 courts is 0.8212, which meets the FY2012 target on the indicator “Annual citizen report cards score of participating courts.” This score is a weighted index for seven measures of court quality: access to courts, convenience and comfortableness of court premises, clarity of information, timeliness of court proceedings, court staff performance, judges’ performance, and quality of judicial opinions.

Meanwhile, FAIR did not make any changes under the indicator “Number of data-fed analytical techniques incorporated into judicial budgeting” due to the delay in the activity, as described in this report under ER3.2. The indicator “Number of project-supported new or improved policies within the SJA” also remains zero for FY2012.

FAIR provided significant support to seven SJA organizational structures, contributing to the related output indicator. Also, through two supported national conferences and 16 regional focus-groups, the project involved 389 justice sector personnel in drafting the Strategic Plan. This number contributes to the indicator “Number of justice sector personnel constructively engaged in long term strategic planning for the judicial branch,” almost doubling the target of 200 for this indicator.

Under Objective 4: “The role of civil society organizations as advocates for and monitors of judicial reform is strengthened,” FAIR achieved its target for the indicator “Number and percentage of courts in which there are active CSO court performance evaluation programs.” Thirty-four courts took place in this year’s CRC surveys; FAIR’s FY2012 target for this indicator. That number is 4.5 percent of all courts in Ukraine; FAIR’s target was 2.6 percent. However, due to the delay in issuing grants to CSOs monitoring courts, the survey implementers are still developing and finalizing their recommendations to the courts. Thus, updated information on the indicator “Percentage of partner Civil Society Organizations’ performance improvement recommendations implemented by judicial institutions” is not available and for FY2012 data, we use the actual figure from the 2011 CRC surveys in 15 courts.

As mentioned above, FAIR experienced a delay in involving CSOs in its judicial reform activities, so there are no changes for the indicators “Number of project-supported public events organized by Civil Society Organizations on judicial reform,” “Number of media outlets used by project-supported CSOs to disseminate judiciary related information,” and “Number of courts offering CSO-produced legal education materials to court visitors.”

At the end of this section, we summarize the key factors of FAIR performance during its first program years. The table below represents FAIR’s actual progress against its FY2012 targets, disaggregated by four project objectives:

FAIR Objectives	Number of indicator targets for Year 1	Targets met and exceeded	Targets met	Changes made, below target	No changes
Program Goal	1	-	-	1	-
Objective 1	6	1	-	3	2
Objective 2	11	3	2	4	2
Objective 3	11	6	3	-	2
Objective 4	5	1	-	1	3
TOTAL	34	11	5	9	9
<i>TOTAL (Percent)</i>	<i>100%</i>	<i>32.4%</i>	<i>14.7%</i>	<i>26.5%</i>	<i>26.5%</i>

As we see, FAIR met or exceeded 16 of the 34 indicator targets set for Year 1, made an impact but did not achieve targets for 9 indicators, and made no progress on 9 indicators.

Where FAIR exceeded its targets, it did so for the following reasons:

- Strengthened collaboration with Ukrainian partners, specifically the State Judicial Administration, the High Qualifications Commission, the National School of Judges, the Council of Judges, Ukrainian Legal Foundation (ULF), and others.
- Strengthened collaboration and resource-sharing with other international donors, including the U.S. Department of Justice, the European Union, and the Council of Europe.
- Greater interest of Ukrainian justice sector personnel in participating in FAIR initiatives.
- Greater interest of courts in participating in FAIR pilot projects.
- Diversifying resources, e.g. using international know-how and expertise suitable to Ukrainian reality and focusing on mobilization of Ukrainian resources as much as possible.

Where FAIR did not meet its targets, it was for the following reasons:

- Lack of political will on the part of lawmakers to consider the recommendations from the international community (particularly, from the Venice Commission) and make the appropriate legislative changes.
- Ukrainian judicial institutions delaying judicial reform activities for various reasons, ranging from inadequate state funding to lack of consensus among and within institutions.
- Issues concerning involving CSOs in judicial reform; on one hand, the number of CSOs capable of working on this issue is very limited, on the other, judicial institutions are sometimes reluctant to cooperate with CSOs.

For the next program year, FAIR will strengthen its activities to mitigate the impact of negative factors:

- FAIR will promote consensus building on implementation of judicial reform between stakeholder institutions and individuals.
- FAIR will intensify the process of involving CSOs in all aspects of judicial reform by working directly with CSOs on building their capacity and promoting cooperation with civil society among judicial institutions and policymakers.
- FAIR will seek to forecast possible project delays and prepare alternative solutions to achieve project expected results, if such delays become probable.

ADMINISTRATION AND PROJECT MANAGEMENT

Chemonics International Inc. signed Contract No. AID-121-C-11-00002 with USAID on implementation of the USAID Fair, Accountable, Independent, and Responsible (FAIR) Judiciary Program in Ukraine on September 20, 2011. The integral parts of the Contract are three Attachments: Attachment J.1 – Subcontracting Plan; Attachment J.2 – Chemonics’ Technical Proposal; Attachment J.3 - Initial Environmental Examination (IEE). On September 17, 2012, per FAIR initiation, FAIR and USAID signed the Amendment of Solicitation/Modification of Contract No. 1, to provide incremental funding and revise the Authorized Geographic Code.

This reporting period, FAIR worked on the following project administration and project management issues related to the project’s start up and implementation:

WORK PLANNING. FAIR conducted three Work Planning Workshops in October 2011, March 2012, and September 2012, related to Work Plans 1, 2 and 3. At these workshops, FAIR staff and representatives of Chemonics’s Project Management Unit (PMU) worked on identifying FAIR’s priorities through September 30, 2013; identifying FAIR’s work plan objectives, tasks, and resources for each of the planning periods; reviewing achievements of work plan milestones from previous work plan periods; learning how best to integrate gender issues into all of our activities; developing a framework for the annual report, including current status of affairs, key achievements, and success stories to date, deviations in implementation and reports, learning new skills in planning for results, communications planning, dealing with difficult partners and effective Ukrainian business communications, and identifying possible program areas and activities for the option period from October 1, 2013 to September 30, 2016.

PROJECT REGISTRATION AND PROTOCOLS OF COOPERATION. In October 2011, FAIR Project signed a Protocol of Cooperation with the SJA. The SJA submitted the letter to the Ministry of Economic Development and Trade of Ukraine (MOEDTU) requesting to include the SJA in the project’s registration card as FAIR’s beneficiary and recipient. According to Cabinet of Ministers Regulation No 153, dated February 15, 2002, on Creation of the Unified System of Procedure for Attracting, Utilizing, and Monitoring International Technical Assistance, in version available in October 2011, only executive-branch institutions can be project beneficiaries. Due to the fact that, according to the new Law on the Judiciary and Status of Judges, the SJA is no longer part of the executive branch and is now part of the judiciary, it was no longer possible to list the SJA as the beneficiary.

The FAIR Project conducted several consultations with USAID and the MOEDTU (the former Ministry of the Economy of Ukraine) on this subject, and the MOEDTU gave FAIR permission to register “With Support of the SJA,” to speed project registration and issued FAIR Registration Card No. 2601, dated October 30, 2011.

To complete the process of listing the SJA as a beneficiary in accordance with Ukrainian legislation, at USAID’s request, FAIR worked with SJA lawyers to propose an article to be included in Cabinet of Ministers Regulation No. 153, dated February 15, 2002, revising the definition of “beneficiary” in regulation No 153 by Cabinet of Ministers Regulation No. 1301, dated December 07, 2011.

In March 2012, in accordance with this new regulation, FAIR and the SJA signed the Procurement Plan of goods, works, and services to be purchased through international technical assistance. FAIR was among the first USAID-funded projects to have such a Procurement Plan in place. On April 04, 2012, the MOEDTU issued FAIR an updated Project Registration Card No. 2601-01, reflecting the Procurement Plan information.

During the reporting period, in addition to the Protocol of Cooperation with SJA, FAIR entered into Protocols of Cooperation with all key Ukrainian partners, including the Supreme Court of Ukraine, the Council of Judges of Ukraine, the High Qualifications Commission of Judges of Ukraine, the Constitutional Assembly, the High Civil and Criminal Court of Ukraine, the High Administrative Court of Ukraine, High Council of Justice of Ukraine, and the National School of Judges of Ukraine. These nine protocols include agreed-upon areas for cooperation and outlined responsibilities for implementing partners and FAIR.

In their letters to the MOEDTU the eight key partners asked the MOEDTU to include their institutions in the list of FAIR recipients. The Constitutional Assembly will provide its letter to the MOEDTU in November 2012. FAIR will then ask the MOEDTU to update its registration card to include the names of the eight new recipients. The Protocols of Cooperation are effective till September 30, 2016.

STAFFING AND EXPERTS. Starting from October 1, 2011 FAIR signed employment contracts with 13 former USAID UROL project employees: Deputy Chief of Party Nataliya Petrova (Key personnel), Judicial Administration Specialist Sergey Suchenko, Judicial Selection Specialist Miroslava Vorontsova, Legal Training Specialist Yuliya Golovanova, Monitoring, Evaluation, and Court Performance Specialist Tomas Verteletskyy, Civic Advocacy Specialist Dmytro Filipenko, Civil Society Specialist and SAF Director Larissa Sinitsyna, Operations Manager Iryna Storozhuk, Finance Manager Lilya Mustafayeva, Interpreter/Translator Irina Chernenko, Information Technology Specialist Irina Kuzmina, Bookkeeper Myroslava Serdyuk, and Administrative Assistant Tetyana Lavrynovych.

On October 1, 2011, FAIR hired Project Coordinator Olga Nikolaeva and Judicial Accountability Coordinator Ashot Agaian.

After conducting interviews with candidates for other open positions, FAIR signed employment contracts with successful candidates: Interpreter/Translator Tetiana Hoch (December 12, 2011), Communications Specialist Olena Kolesnichenko (December 19, 2011), Judicial Accountability specialist Oleksiy Gotsul (January 10, 2012), and SAF Coordinator Lidia Lypova (January 10, 2012).

Each employee signed his or her job description in the employment contract.

After Yuliya Golovanova's decision to leave the FAIR project to pursue new opportunities, the FAIR project selected Iryna Zaretska for the position of the Legal Training Specialist.

In September 2012, Oleksiy Gotsul accepted the position of Assistant Lawyer at the European Court of Human Rights starting on October 01, 2012.

In September 2012, FAIR announced about vacancies for the positions of Judicial Accountability Specialist and Administrative Assistant and started interviews with short-listed candidates. FAIR plans to select successful candidates in October 2012.

Of the 19 long-term local positions under the project, LOE of 12 positions is counted toward the total professional level of effort.

To succeed in project implementation, FAIR engages short-term international, European, and local experts in its various activities.

On August 9, 2012, pursuant to AIDAR 722.170, FAIR obtained the Mission Director's waiver to allow project to pay Third-Country Nationals (TCNs) in excess of the USAID/Ukraine Local Employee Compensation Plan (LECP) and in U.S. Dollars.

FAIR obtained a Ukraine visa for Chief of Party David Vaughn and registered him as chief of party in Ukraine according to the newly adopted by the Cabinet of Ministers Regulation No 150 on February 15, 2012 rules on temporary residence permission for the foreign citizens in Ukraine. The SJA provided support letters to FAIR, as the new procedure requests.

VAT. In 2012, FAIR was implementing the new VAT exemption following the Amendment to the Cabinet of Ministers Resolution No 153 on revised VAT exemption procedures. On May 22, 2012, FAIR participated in a USAID roundtable discussion on new VAT exemption rules. At the meeting, participants discussed questions or concerns that should be raised with the Government of Ukraine regarding the VAT exemption procedure at any stage, including procurement plan approval, purchasing with vendors, or reporting to tax authorities. FAIR was one of the few USAID projects invited to participate in the meeting, and FAIR representatives provided USAID with qualified feedback/comments/concerns/challenges on the new procedure.

USAID and the U.S. Embassy used this information to work with the Government of Ukraine to try to simplify the procedure.

In this reporting period, FAIR submitted two informational reports regarding all VAT-exempted purchases in July and August 2012 to the Shevchenkivska Tax Inspection in Kyiv City. Monthly reporting takes place on the 20th of the month. To obtain USAID cover letters to go with the reports, FAIR has to submit copies of the reports to Tatiana Kistanova by the 16th of every month. In addition, at USAID's request, FAIR provided USAID with the report on all VAT-exempted purchases from February 1 to June 30, 2012 using the monthly VAT-report format for Tax Authorities.

During the reporting period, FAIR provided qualified consultations to other USAID-funded projects and ABA/ROLI on the new GOU regulations related to the project registration, procurement plan, VAT exemption, etc.

FAIR also advised key project partners on logistical and administrative subjects concerning the implementation of their respective events and activities.

BUSINESS CONDUCT. In this reporting period, FAIR staff successfully completed Chemonics "Living Our Values" standards of business conduct training.

DONOR COORDINATION

This reporting period, the FAIR team hosted eight Rule of Law Donors and Implementers meetings:

- On October 5, 2011, featured speaker Maryna Stavniychuk, Presidential Advisor and Head of the Presidential Administration's Main Office for Constitutional and Legal Affairs, a member of Council of Europe's Venice Commission, shared her views on the current status of judicial reform in light of the Venice Commission's opinions and discussed efforts to reform the Constitution of Ukraine in line with international and European standards.
- On November 2, 2011, Roman Romanov, International Renaissance Foundation Rule of Law Program Director, gave a summary of the recent Council of Europe's Venice Commission opinions on the draft Law on the Bar and the draft Law on the Freedom of

Assembly as to the extent to which they are in line with international and European standards.

- On February 8, 2012, Vitaly Kulyk, Deputy Head of the Department on Constitutional-Legal Modernization of the Presidential Administration, gave an update on the current status of Constitutional reform in Ukraine, including the Presidential Decree No. 31/2012 on forming the Constitutional Assembly.
- On March 14, 2012, Serhiy Holovaty, Member of Parliament and Co-Chair of the Commission for Strengthening Democracy and Rule of Law, provided an update on the Commissions current plans and priorities for promoting legal and judicial reform in Ukraine.
- On April 4, 2012, Judge Tetiana Kozyr of the High Commercial Court and Secretary of the COJ discussed the COJ's effort to amend the Code of Judicial Ethics of 2002 to bring it in line with current Ukrainian legislation and international and European standards for judicial conduct.
- On May 16, 2012, Ruslan Kyryliuk, Head of the SJA, provided an update on the SJA's efforts in supporting judiciary activity and priorities for the future. The agenda of this meeting also included a presentation of a new five-year project in Ukraine funded by the Canadian International Development Agency: Judicial Education for Economic Growth, started by the Canadian National Judicial Institute.
- On June 6, 2012, Oksana Kuchynska, Vice-Rector of the NSJ, and Mary K. Butler, Resident Legal Advisor, U.S. Embassy in Ukraine, Chief of Criminal Justice Reform Program, U.S. Department of Justice – OPDAT, provided an update on CPC implementation with regard to the training on the novelties of the Code.
- On September 12, 2012, Mykhailo Tsurkan, Deputy Chief Judge of the HAC, and David Ennis, Chief of the Party of the IFES Ukraine, discussed election-law issues related to the upcoming parliamentary elections, including the results of a series of regional judicial training programs conducted jointly by the HAC, IFES, and FAIR this summer.

In October 2011, Chief of Party David Vaughn and Evaluation and Court Performance Specialist Tomas Verteletsky supported the USAID UNITER Project by participating on its selection committee for NGO capacity building grant competition.

On December 15, 2011, Mr. Verteletsky represented FAIR on Civil Society and Media Sector Donor Coordination Meeting hosted by Internews Network. During the meeting, the following issues were covered:

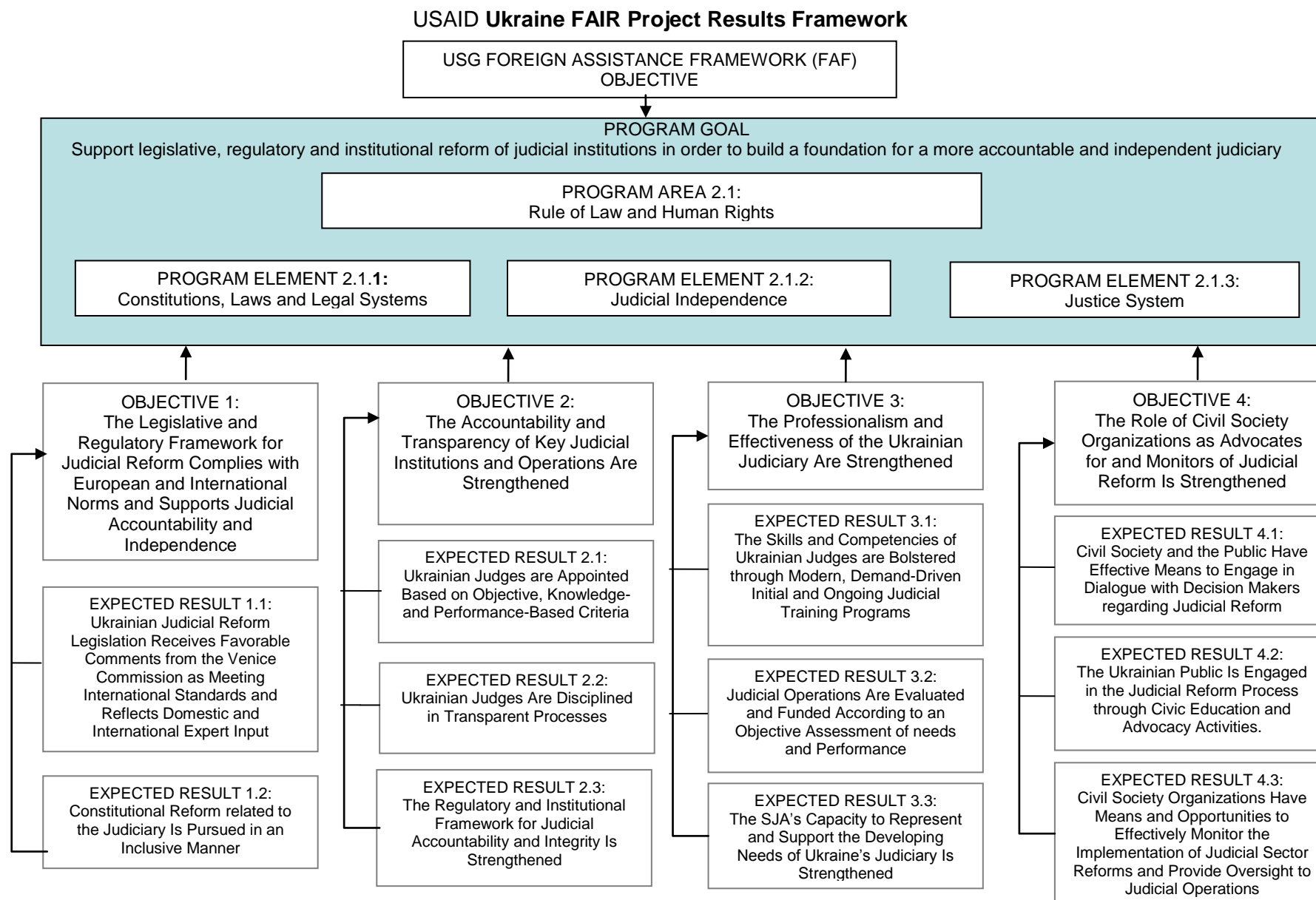
- Law on Access to Public Information: assessment of the various coalitions
- Plans for the year ahead: civil society and media sector donors
- Plans for parliamentary elections program support.

Also during this reporting period, Chief of Party David Vaughn attended the National Adversarial Proceedings Competition organized by the USAID Building Ukrainian Independence and a Lasting Democracy (BUILD) project in April 2012. The FAIR team attended Parliamentary Technical Assistance Organization Coordination Meetings in October, November, and December 2011 and January, February, March, April, June, and August 2012; provided nominations for the Library of Congress Open World Program in November 2011; and participated in the Pravova Krayina Media Club launch organized by the USAID LEP on the occasion of the All-Ukrainian Free Legal Aid Day.

LIST OF ANNEXES

Annex 1: Performance Management and Evaluation Summary

ANNEX 1: PERFORMANCE MANAGEMENT AND EVALUATION



PERFORMANCE INDICATORS	BASELINE DATA		Annual 2012 TARGET	Annual 2012 ACTUAL	TARGET Annual 2013	TARGET Cumulative Project End Base Period	Notes and Explanations
	Month/ Year	Value					
Program Goal: Support legislative, regulatory and institutional reform of judicial institutions in order to build a foundation for a more accountable and independent judiciary							
1. Number of legal institutions and associations supported by USG	Oct'11	30	24	22	24	30	In 2012 FAIR supported 13 governmental judicial institutions namely: Constitutional Assembly, State Judicial Administration, High Qualifications Commission, National School of Judges, Supreme Court, High Specialized Criminal and Civil Court, High Administrative Court, High Commercial Court, Ministry of Justice, President Administration, Verkhovna Rada Justice Committee, High Council of Justice, Commission for Strengthening Democracy and Rule of Law. Also FAIR supported 9 non-governmental legal associations: Ukrainian Association for Court Advancement (UACA), Center for Legal Reform and Legislation Drafting, Charitable Organization “Your Right”, Regional Public Charitable Foundation “Law and Democracy”, Association of Volyn Youth Rights Protection, Podilska Human Rights Foundation, TORO Creative Union (representative of Transparency International in Ukraine), Institute for Applied Humanitarian Research (IAHR), Ukrainian Legal Foundation (ULF)
Objective 1: The legislative and regulatory framework for judicial reform complies with European and international norms and supports judicial accountability and independence							

2. Number of laws, regulations, and procedures designed to enhance judicial independence supported with USG assistance	Oct'11	8	2	4	2	14	During 2012 FAIR – promoted changes in Ukrainian legislation came into effect with adoption of the following laws: Law on Amendments to a Number of Legislative Acts Regarding the Supreme Court of Ukraine, Law on Amending Some Legislative Acts with Regards to Adoption of the Criminal Procedure Code, Law on Amending some Legislative Acts of Ukraine which amends the Law on the High Council of Justice, Law on the Verkhovna Rada Rules of Procedure, and Law on the Judiciary and Status of Judges regarding strengthening judicial independence and, Law on the Bar and Advocates Activity.
Expected Result 1.1: Ukrainian judicial reform legislation receives favorable comments from the Venice Commission as meeting international standards and reflects domestic and international expert input							
3. Number of revised provisions enacted that reflect Venice Commission recommendations	Oct'11	0	22	4	18	22	Law on Amendments to a Number of Legislative Acts Regarding the Supreme Court of Ukraine addresses two of the Venice Commission recommendations. The Law on Amending Some Legislative Acts of Ukraine (No. 4874) regarding strengthening the judicial independence addresses 2 of Venice Commission recommendations on the discretion power of President and Verkhovna Rada in judicial appointment. Actual 2012 data is below target. Annual 2013 target revised based on 2012 actual data.
4. Percentage of Venice Commission recommendations adopted	Oct'11	0	80%	15%	65%	80%	
Expected Result 1.2: Constitutional reform related to the judiciary is pursued in an inclusive manner							
5. Number of project-supported communication products issued by civil society organizations on constitutional reform	Oct'11	0	2	0	4	4	Delay in activity implementation since Constitutional Assembly started its activity in June 2012. Related activity is scheduled for the next year. Annual 2013 target revised based on 2012 actual data.
6. Number of working sessions on Constitutional reform between law makers and civil society organizations	Oct'11	0	2	1	3	4	In 2012 FAIR supported the first plenary meeting of the Constitutional Assembly. Constitutional Assembly consists of representatives of parliamentary factions and groups, political parties, the National Academy of Sciences, academic research institutions and Civil Society Organizations NGOs. Annual 2012 data is below target. 2013 target revised based on 2012 actual data.

7. Number of civil society organizations who have experience in constitutional reform participating in public events on the Constitution	Oct'11	0	15	0	30	30	Delay in activity implementation since Constitutional Assembly started its activity in June 2012. Related activity is scheduled for the next year. 2012 data is below target. Annual 2013 target revised based on 2012 actual data.
Objective 2: The accountability and transparency of key judicial institutions and operations are strengthened							
8. Number of new properties and functions surrounding judicial selection and discipline introduced to HQC website with project support	Oct'11	0	10	1	14	15	2012 data counts importing module for the HQC website enabling automatic posting of judicial discipline decisions. 2012 annual data is below target. 2013 target revised based on 2012 actual data.
Expected Result 2.1: Ukrainian judges are appointed based on objective, knowledge- and performance-based criteria							
9. Number of merit-based criteria or procedures for justice sector personnel selection adopted with USG assistance	Oct'11	2	10	2	18	20	Delay in drafting the list of judicial competencies due to lack of consensus among HQC members on this subject. For 2012 FAIR counts procedures for drafting and validating case studies adopted by HQC this year. 2013 annual target revised based on 2012 actual data.
10. Number of procedures within the judicial appointment process improved with project support	Oct'11	0	4	4	5	9	During 2012 HQC improved with FAIR support the Procedure of the Judicial Anonymous Test Administration, Regulation on Passing Judicial Qualification Exam (including procedures for drafting and validating case studies) and Regulation on Judicial Vacancy Application. 2012 target met.
11. Number of judicial test developers trained with project support	Oct'11	0	20	11	20	25	In 2012 FAIR trained 11 justice sector personnel, representatives of the National School of Judges of Ukraine and High Qualifications Commission of Judges of Ukraine as judicial test developers.
Expected Result 2.2: Ukrainian judges are disciplined in transparent processes							

12. Number of criteria, standards and regulations adopted to govern judicial misconduct investigations	Oct'11	0	4	0	8	8	FAIR supported the development of a draft Instruction on Verification Procedure and Decision-Making in Disciplinary Proceedings against Judges, draft Job Description for Disciplinary Inspectors and Regulation on Service of Disciplinary Inspectors. FAIR presented developed drafts to the HQC for consideration but formal adoption of these regulations has not yet happened. Thus, 2012 data is below target and 2013 target revised accordingly.
13. Per cent of judicial misconduct complaints submitted to the HQC using the standardized form	Oct'11	2%	3%	8,9%	10%	10%	8,9% represent calendar year 2012 data. From January 1 to September 30, 2012 HQC received 12,053 judicial misconduct complaints, 1,070 of them are on standardized form available on HQC and HCJ websites.
14. Number of government institutions placing judicial misconduct complaint form on their website.	Oct'11	1	1	2	1	1	In addition to the HQC, HCJ posted judicial misconduct complaint form on HQC website. Direct links are http://vkksu.gov.ua/ua/distsiplinarne-provadjennya/zayava-shodo-nepravomirnoi-povedinki-suddi/ and http://www.vru.gov.ua/complaint
15. Per cent of judicial discipline decisions posted on HQC website	Nov'11	47%	80%	81%	100%	100%	81% represents 2011-2012 data. During this period HQC made 233 judicial discipline decisions, 189 of them are on HQC website. Direct link is http://www.vkksu.gov.ua/ua/distsiplinarne-provadjennya/informatsiya-pro-prityagnennya-suddiv-do-distsiplinarnoi-vidpovidalnosti/
16. Number of judicial disciplinary inspectors trained with project support	Nov'11	0	30	2	30	30	During this reporting period FAIR supported judicial selection and discipline study tour to the US where two HQC judicial disciplinary inspectors and head of judicial disciplinary inspectors HQC department took part.
Expected Result 2.3: The regulatory and institutional framework for judicial accountability and integrity are strengthened							
17. Number of judicial self-governance mechanisms revised with project support	Oct'11	0	1	0	3	3	FAIR supported the Draft Code of Judicial Ethics and it's currently is under public discussion. We expect the approval of the new Code in 2013. 2013 target revised.
18. Number of judges providing feedback to revisions of judicial self-governance mechanisms	Oct'11	0	100	160	100	200	160 judges from 21 regions provided their feedback to the Draft Code of Judicial Ethics at five FAIR-supported roundtable discussions in L'viv, Odesa, Ivano-Frankivsk, Chernihiv and Sevastopol.

Objective 3: The professionalism and effectiveness of the Ukrainian judiciary are strengthened							
19. Number of USG-assisted courts with improved case management	Oct'11	14	20	22	20	30	Citizen report cards (CRC) surveys conducted in 34 cooperating courts identified improving case management in at least 22 courts according to court user responses.
20. Number of judges and judicial personnel trained with USG assistance	Oct'11	2,946	300	875	400	3,500	FAIR trained 875 judges and judicial personnel in 2012 including 407 men and 468 women (46,5% and 53,4% accordingly). Training events include TOT on new Criminal Code, trainings on application of electoral law during 2012 Parliament Elections, judicial selection and discipline study tour to the US, court performance evaluation, court budgeting and judicial test writing trainings.
Expected Result 3.1: The skills and competencies of Ukrainian judges are bolstered through modern, demand-driven initial and ongoing training programs							
21. Number of new legal courses or curricula developed with USG assistance	Oct'11	8	3	3	3	14	In 2012 FAIR supported the development and publishing the second edition of the Judicial Opinion Writing Handbook and two new training course for judges on application law regarding the 2012 Parliament Elections and on application of the new Criminal Procedural Code,
22. Number of TOT trainers created	Oct'11	187	30	59	30	70	FAIR and National School of Judges conducted three TOTs on application of the new Criminal Code of Ukraine and adults training techniques where trained 59 judges including 41 men and 18 women. 2012 target exceeded, thus we've revised cumulative project end target.
23. Number of judges trained with USG assistance	Oct'11	1,700	200	664	300	2,200	FAIR trained 664 judges in 2012 including 362 men and 302 women (54,5% and 45,4% accordingly). Training events include TOT on new Criminal Code, trainings on application of electoral law during 2012 Parliament Elections, judicial selection and discipline study tour to the US and court performance evaluation trainings.
Expected Result 3.2: Judicial operations are evaluated and funded according to an objective assessment of needs and performance							
24. Number of court performance standards adopted	Oct'11	0	0	0	5	5	Draft of the court performance measurement framework developed and based on 4 measurement areas. It contains 24 court performance criteria and more than 70 indicators. Adoption of the framework is expected in 2013.

25. Number of courts involved in piloting court performance standards	Oct'11	6	12	13	12	12	13 courts conducted pilot testing of standardized court performance measurement framework in 2012.
26. Annual citizen report cards score of participating courts	Oct'11	.77 (out of max score of 1)	.82	.82	.87	.87	8 CSOs completed citizen report cards surveys in 34 courts. The average score for 34 courts is 0.8212. Minimum score is .7252 and maximum score is .9096. This score is a weighted index for 7 measures of court quality: access to courts, convenience and comfortableness of court premises, clearness of information, timeliness of court proceedings, court staff performance, judges' performance and quality of judicial opinion.
27. Number of data-fed analytical techniques incorporated into judicial budgeting	Oct'11	0	3	0	3	3	Activity delay. FAIR prepared methodology for the collection of statistical data and a set of relevant tools required to develop case weighting standards and submitted to the SJA/COJ for review. Case weights resulting from case weighting study is currently in the process of discussion and validating. 2013 targets revised accordingly.
Expected Result 3.3: The SJA's capacity to represent and support the developing needs of Ukrainian judiciary is strengthened							
28. Number of project-supported organizational structures within the SJA for the support of information technology, procurement, capital improvement, human resources, statistical collections and analysis activities within the courts	Oct'11	1	7	7	7	7	In 2012 FAIR provided significant support to the following SJA structures: 1) departments for judicial statistics, 2) department for information technologies, 3) department for labor payments provision, 4) department for audit, 5) department for financial provisions of local and appellate courts , 6) department for financial provisions of administrative and commercial courts and 7) the SJA Working Group on Innovations.

29. Number of project-supported new or improved policies within the SJA for the support of information technology, procurement, capital improvement, human resources, statistical collections and analysis activities within the courts.	Oct'11	0	4	0	7	7	Activity delay. In 2012 FAIR focused on developing and finalization of case weighting methodology and improving court budgeting. 2013 target revised to catch up with initially set cumulative project end target.
30. Number of justice sector personnel constructively engaged in long term strategic planning for the judicial branch	Oct'11	0	200	389	0	200	In 2012 FAIR involved 389 justice sector personnel in long-term strategic planning for judiciary through providing opportunity to contribute to the Draft of Strategic Plan. This is the total number of participants of two Strategic Planning conferences and 16 regional focus group discussions.
Objective 4: The role of civil society organizations as advocates for and monitors of judicial reform is strengthened							
Expected Result 4.1: Civil society and the public have effective means to engage in dialogue with decision makers regarding judicial reform							
31. Number of project-supported public events organized by Civil Society Organizations on judicial reform	Oct'11	0	10	0	20	20	Activity delay. No measurable changes in 2012. 2013 target revised to catch up with base-period expected outcomes.
Expected Result 4.2: The Ukrainian public are engaged in the judicial reform process through civic education and advocacy activities							
32. Number of media outlets used by project-supported CSOs to disseminate judiciary related information	Oct'11	0	50	0	50	50	Activity delay. No measurable changes in 2012. 2013 target revised to catch up with base-period expected outcomes.
33. Number of courts offering CSO-produced legal education materials to court visitors	Oct'11	0	20	0	30	30	Activity delay. No measurable changes in 2012. 2013 target revised to catch up with base-period expected outcomes.

Expected Result 4.3: Civil society organizations have means and opportunities to effectively monitor the implementation of judicial sector reforms and provide oversight to judicial operations							
34. Number and percentage of courts in which there are active CSO court performance evaluation programs	Oct'11	20 2,6%	20 (2,6%)	34 (4,5)%	34 (4,5)%	34 (4,5)%	8 FAIR CSO partners started the implementation of external court performance evaluation by way of citizen report cards (CRC) surveys in 34 courts. It's 4.5% of all courts in Ukraine. 2012 target exceeded. 2013 target revised accordingly.
35. Percentage of partner Civil Society Organizations' performance improvement recommendations implemented by judicial institutions	Oct'11	30%	40%	30%	50%	50%	Annual 2012 actual figure is based on 2011 data, e.g. third round of Citizen Report Cards (CRC) surveys in 15 courts under predecessor UROL project. 2012 CRC surveys completed in 34 courts but partner CSOs are still in the process of developing and finalization their recommendations to courts. This delay is caused by longer than planned process of FAIR Grants Manual finalization and formal approval in the beginning of this program year which further caused later start of 2012 CRC program.